JUDGE DODERIDGES

READING

OF

Advowsons, or *Church-Livings*.

WHEREIN

Is set forth, the Interests of the *Parson*, *Patron*, and O[illegible]

WITH

Many other things concerning the Matter, as they were delivered at several READINGS at *NEW-INNE*.

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A

A Compleat Parson.

OR, A Description of Advowsons.

LECT. I.

The name, nature, Divisions, Consequents, causes, and incidents of Advowsons, or Patronages.

FOrasmuch as wee are said to know, *cum Causæ cognoscimus*, and seeing hee laboureth in vaine, that seeketh to apprehend the knowledge of the accident, which is ignorant of the substance: and seeing nothing setteth out the nature of the thing, but the Description and Definition, and

Tull: Offic. lib. 1. that *Omnis quæ à ratione suscipitur, de re aliqua, institutio, debet à definitione proficisci vt intelligatur quid sit id de quo disputatur*: I will begin as good order requireth, with the Description of an *Advowson*, that the nature thereof beeing knowne, wee may the better obserue, the coherence and congruence of this kind of Learning.

Quid. An *Advowson* therefore generally considered, is a right that a man hath, to preferre his friend, or any fit person, to promotion Presentatiue, or Donatiue.

This Definition is generall, and may be attributed to all persons, whereof a man may have a *Quare Imp*: if he be Disturbed; for, the Writs mentioned in the Statute, lyeth not onely of Dignities Presentatiue by the course of the Common Law, but also of promotions Donatiue by this Statute: As Chaunteries Donatiue, * Free chappels, &c. Also it lyeth, of a Subdeaconship, or Hermitage, which also may bee Donatiue; and this is grounded vpon the words of the Statute, *De cetero concedantur brevia de cappillis, Prebendis, Vicariis, Hospitalibus, Abbatis quæ prius concedi non consueuerunt*; Yet neuerthelesse, I read that a *Quare Imp*: was maintained of a Chappell, by the common Law, but such a Chappell (perchance) was presentatiue, and not Donatiue. Promotions presentatiue (whereof the Writs are mentioned

Fitz. N. Br. 30. Ibid. 33. a. 31. E. Ib. 349. E. 14. H. 3. Fitz. quare Imp. 183.

tioned in the Statute) were maintained at the Common Law; as Churches, Chaunteries, and Chappels presentatiue, and such like.

And therefore as the afore-specified Definition, or Description is generall, and appliable to both: So are those subsequent, more properly to be applyed to Churches *Advowsons*, in which are Cures of Soules.

An *Advowson*, or as the terme, *Jus Patronatus est potestas presentandi aliquem instituendum ad beneficium Ecclesiæ simplex & vacans*: and of other respects the causes and incidents of *Advowsons*, is Described more amply in such manner, *Ius patronatus, est ius honorificum, onerosum, & vtile.*

Summa hostensis de iure patrono.
Suma Anglie eod. tit.
Súma Silue strine tit. Patronatus.

In effect this: A *Patronage*, or an *Advowson*, is a right to present to the Bishops or Ordinarie a fit person, by him to be admitted and Instituted into a Spirituall Benifice when it becommeth voyd: And hee that hath such right to present, is called Patron: who is thus described, *Patronus est Defensor Ecclesiæ, qui habet ius presentandi Episcopo aliquem vel aliquos in aliqua Ecclesia & in ea ab ea instituatur.* And he is so called, *De patrocinio*, of defence: For that, that he should defend the Church, or *à similytudine Patris, quia sicut pater filium, sic patronus Ecclesiam, de non esse, de ducit ad esse.*

Hee is called of Old *Glanvile*, *Advocatus*; as that he should say, an Advocate of the causes of

the Church, and therefore the inheritance is called *Advocatio*, or *Advowson*, or is deuised *Devocando*: for that, that the Patron hath power, for the presentment of a fit person, by the name of his presentation. And heere by the way, let no man thinke, that I thrust my selfe *in messem alienam*, and to borrow of the Cannonists, as well now the Description and Etimologie before shewed, and after also, to fetch from them more high matter. But let such curious Carpers, (if any bee) remember the Speech of *Asly-*
43. H. 6 40 v, *Asliton* *ton*,* who affirmeth, that every *Advowson*, and right of Patronage, dependeth upon two Lawes, that is to say; the Law of holy Church, and our Lawes, so that the true determination of such learning, is as he saith; *Per ius mixtum*, by both Lawes; that is, Ecclesiasticall, and Temporall: And therefore, when wee purpose to seeke the things in this kind of learning, wee must of necessity bee beholden to them.

But to returne where wee digressed.

The materiall causes and subjects, in which this learning dependeth, are the things before mentioned. As Churches, Chaunteries, and Chappels presentatiue, and such like.

Churches are of three sorts { Cathedrall, Collegicall, and Patrochiall.

A

A Cathedrall Church, is the seate or Church of a Bishop, and therefore hee onely may bee said Incumbent thereof.

Collegiall or Conventuall Churches, are such as in times past, have beene in Priories, Abbies, or such like, and are still in Colledges.

Parrochial Churches are well knowne, and are those, *Ad quem plebs convenit ad percipienda Sacramenta Baptismatis & Corporis Christi unde pabulum animas sustentandas libere suscipiunt*, for the Incumbent thereof, is onely charged with the cure of soules. And it is commonly called by the name of *Rectorie*, which is into two sorts divided, being either a Parsonage, or a Vicarage. And so much briefely for the name, matter, and substance of *Advowsons*.

Iohan bellonius de etimologiis.

34. E. 3. *Fitz. Qu. Imp.* 187.

The former cause or manner of this Inheritance, yeeldeth forth the usuall and ordinarie distinctions of *Advowsons*, to bee either appendant, or in grosse, or part appendant, part in grosse, either for a certaine time, or in respect of certaine persons.

The efficient Causes of a Parsonage, are
1. *Ratione Dotationis.*
2. *Ratione Fundationis.*
3. *Ratione Fundi.*

Ratione Dotationis, is, when he, or those from whom he derives his interist, endowed the same Church.

2. *Ratione Fundationis*, is, when he or his Anceſtors, or thoſe from whom he claimes his intereſt, were founders of the ſame Church.

3. *Rationi Fundi*, is, when the Church was built upon his or their Land, from whom hee derives his intereſt; or all three together, as appeareth by the verſe, uſed amongſt the Canoniſts.

Patronum faciunt dos, ædificatio, fundus.

Summa hoſtienſ. tit. jus Patronat.

The uſuall cauſe or cauſes, why Patronages of Churches are given by the Law, and beſtowed upon Lay-men; is, and were, *Vt inducantur laici ad fundationem, conſtructionem, & Dotationem Eccleſiæ.*

The fruit and effect of a Parſonage conſiſteth in thoſe three things. { *Honos.* *Onus,* & *Vtilitas.*

1. *Honos,*

The *Honour* attributed to a Patron, conſiſteth in his right preſentment. In the diſcourſe whereof, I ſhall afterward conſider, what is required, before the ſame can bee attempted: then what the manner of preſentation is; and laſtly, what is required for the making of a full and perfect incumbent.

Before the preſentation can be lawfully made, it is meet that the Church become voyd, and of avoydance, our Law taketh notice, the ſame being tryable thereby.

The

The manner and meanes how an Avoydance groweth, is either Spirituall, or Temporall.

1. Temporall, by the death of the Incumbent. 1.

2. Spirituall, and this is in divers manners; 2.
that is to say, by Resignation, Deprivation, Creation, Session, and entry into Religion.

As touching presentation, we are to see; first, what it is; then who shall present; afterwards what person may be presented; and last of all in what manner the same must be done.

Those things, that are required to make a perfect Incumbent, after the presentation had, dependeth upon the Duty of the Ordinary; As first, Admission, which requireth examination of the Clarke, whereupon sometime ensueth a refusall, and thereupon, either notice, or no notice (as the case requireth) is to be given to the patron.

If the Clarke be admitted, then, hee must bee instituted, wee are then to see what Institution is, and what is the effect thereof, upon which ought to ensue Induction thereinto, likewise we must see what it is, by whom it is to bee performed, and what it doth import.

If the Patron be remisse, and doth not present within the time limited, then incurreth the lapps of the Patron, to the Bishop, and from the Bishop, to the Metropolitan, and from him to the Crowne, where it resteth; but if the

Bishop

Bishop take his time; then is his presentation a Collation, and in the right of the patron himselfe.

Onus. 2 The second effect of a personage, (which is *Onus*) resteth onely in the defence of the Churches possessions, to which the Patron and Ordinarie by aide prayer, are to bee called by the Incumbent, for the defence of the same, to avoid such charges and incumbrances, as are unduely laid thereupon.

Utilitas. As touching the third, which is *Utility*, wee have not any thing to doe with it in our Law; but, wee must leave the consideration thereof to the Cannon law, for this Utility is imployed for the sustentation of the patron; for if hee or his posterity being patrons doe fall to decay, then the incumbent of the fruits of the Church by compulsary Censure, of the Ordinary, according to that Law, is to be enforced to make contribution to them.

All writs concerning this kind of Inheritance are either given to the patron or Incumbent.

Brevia. Writs given to the patron are of two sorts, for either he demandeth his Inheritance, or presentation, against the possessor, of the patronage, or he attempts suit against the Ordinary, for either not doing, or doing his Duty unduly.

In every action brought against him that pretendeth possession, it is to be intended, that either he is lawfully, or unlawfully possessed.

The

The unlawfull possessor, is the usurper, against whom onely lyeth three Writs which the Statute speaketh of: namely, One of the right, as the writ of right of Advowson, and the other two of the possession, as a *Quare Imp.*: and Darraigne presentment.

Against the lawfull possessor, lyeth the writ of *Dower*, for the wife of him that dyed seized of such estate as shee might be endowed of, and a *Cessavit* of the land against the Tenant. 33. *H.* 6. 34. *b.* & 35. *a. all.*

But no Formedon lyeth for the issue in taile in Discender, nor for any in the remainder, nor for the Doner in the reverter; for that, that if the *Advowson* be in grosse it cannot properly be discontinued, and being appendant it it to be recontinued by the same meanes, that the land to which it is appendant, is to be recovered. 13. *E.* 3. 15. *b.* 33. *H.* 6. 33. *a.* 5. *H.* 7. 36. *b.* 37. *a.* Fitzh. 11. *br.* 217. *b.*

The Incumbent as touching his right for his Rectory, hath the onely writ of *Juris utrum*, and for his possession, any other possessarie action. For if another happen (during his presentation) to be presented by the same patron, or doe come into the same Church, by course of the Law, so that the patronage commeth into debate, there lyeth a spoliation, it being a suit in the *Spirituall Court*.

Lect. 2.

The right that both the Patron and Ordinarie hath joyntly to intermeddle with the Church.

IN the former Lecture, or Reading, having delivered in the project, a Discourse of *Advowsons*, briefely discovering their Name, Nature, Divisions, consequents, causes, effects, and Incidents of the Patronage: Now it remaineth in like manner to prosecute every of those parts, then but poynted at, with a more large and ample explication.

First therefore, it is to be considered, that in every Benefice three persons have interest. That is to say, the Parson hath a Spirituall possession. The Ordinarie to see the Cure served: And the Patron hath *Ius presentandi.*

12. *H.* 8. 7. *b.* per Pollyard.

Hence it is that I have said, that a Patronage is a right of presentation; therefore it is called, *Ius Patronatus*; not a power, nor an authoritie onely, but a right, interest, or an Inheritance:

Com. 284. *a.* The word *Ius* or Right, is diversly intended, some times strictly, to signifie what is left a man,

Com. 487. *b.* when that, that was once his owne is wrongfully taken from him, as by *Disseisin* or such like.

In which sence, the word *Droit* and *Tort* are

Bracton Ius, privat: opposita, and is thus devided; to bee either

ther right of Action, or right of Entrie; some-times in a more ample signification, as *Ius habendi, jus possessendi, jus disponendi*; by which occasion I purpose at this time to discusse, whether the Patron and Ordinarie have right in the Rectorie or Benefice, and what manner of right it is that they have; their right is called *Collaterall*, as wee read, and not *Habendi*, nor *possessendi*, nor *retinendi*; for none of them, can have, retaine, or possesse the Church or Rectorie, but their right is, *Ius Disponendi*, wherein everie of them hath a particular Charge to the possessions of the Church, so free as that hee may maintaine such a one as is thereinto to bee presented.

That they have a kind of Disposition in them, it is proved by many reasons: 1. No charge can be founded to be laid upon the Church in perpetuitie: to bind their successors, but the Patron and Ordinarie must be made parties thereunto as all our books agree, & *Littleton* gives a notable reason for it. Which is, that if the Charge be perpetuall, the consent of all three ought to concur, of which ensueth thus much, that if a writ of annuitie be brought against the parson, & he prayeth in aid of the Patron & Ordinarie, & the Patron maketh default, and the Ordinarie appeareth, and confesseth the action; or if the Ordinarie make default, and the patron appeare, and confesseth the action, that this annuitie shall not

2. *H.* 7. 36. *Ratio* 1.

12. *H.* 8. 7. *b.*

bind the ſucceſſor: but if they both appeare and one of them confeſſe the action, and the other ſaith not any thing, it ſhall bind the Rectory in perpetuity. For *Qui tacet conſentire videtur*. But if the Parſon onely with the conſent of the Ordinary for tythes or other conſideration executory, charge the Church in perpetuity, it ſhall bee good, without the conſent of the Patron, as well as if the conſideration executory had remained.

2. Secondly, it followeth, that the charge of the Parſon, patron and Ordinary ſhall binde in like manner as their intreſt is. But if a man have an *Advowſon* for yeares, and the parſon by the conſent of ſuch patron and Ordinary, grant rent charge in fee, if the parſon die within the terme, and the termour of the *Advowſon* preſents another, and the term expireth, *Quere* if then the annuity ſhall be delivered, but it ſeemeth by ſome that it ſhall be delivered; for that, that this Incumbent was not the party that made the grant, and therefore he ſhould not hold it charged any longer, than during the intreſt of the patron.

And therefore if two joyntenants in common, or parceners be of an *Advowſon*, who agreeeth to preſent by turne, if the parſon joyne in grant of a rent charge in fee, with one of them, the parſon ſhall bee charged and alſo his ſucceſſors (*alterius vicibus*) for ever; becauſe, thoſe ſucceſſors (that commeth in) by him that made the

the Charge, shall be subject to it only, and those that commeth in by the presentation of the Patron, that neither joyned nor confirmed, the same shall hold their land discharged for ever.

Also, such Annuitie with which the Rectorie is charged, doth not properly charge the Land but the Parson; for, if the Grantee enter into any part of the Glebe, hee shall not suspend the rent or annuitie.

And if the Parson, Patron, and Ordinarie, joyne in a grant of an Annuitie to *S. H.* and his heires, except they speake of the successours of the parson, and that the same be granted for the parson and his successours, this cannot bee good longer than for the time, that the parson that granted the same, continueth Parson; for an Annuitie is nothing but a parsonall Dutie, and no otherwise. And if such an Annuitie be granted over, it is not needfull to have Attornment; all which proveth, that the same chargeth not the land, but the parson; yet nevertheless, the parson is charge, for if the Grantor assigne or be removed by any meanes whatsoever, the charge followeth not his parson, but resteth upon his Successours, and the Jurie may bee taken of the Towne where the Church is, which proveth that such grant chargeth the parson in respect of the Land. 21. Hen. 4.

Moreover, when the Patron and Ordinarie confirmeth the grant of the parson, it is requi-

ſite that the Confirmation be made during ſuch time, as he is Incumbent that made the Charge; for if hee dye, be removed, reſigne, or otherwiſe be deprived before the confirmation, ſuch Confirmation is voyd notwithſtanding.

If an Incumbent grant rent charge, to begin after his death out of his Rectorie, and the patron and Ordinarie confirmeth the ſame, this is good for long time as it is granted.

Ratio 2. The ſecond principall Reaſon, to prove the
31.*E.*3. intereſt they have to the Church or Rectorie, is,
Graunt 90. that all three may charge the Church in perpe-
Annuitie. tuitie, ſo may the patron and Ordinarie doe onely in time of vacation, which charge ſhall bind the Succeſſor for ever. Becauſe none hath intermeddling with the Rectorie, but the Grantors aforeſaid.

Ratio 3. The third principall reaſon, is this, that as the
Fitzh. Releaſe, 57. patron and Ordinarie in time of vacation, may
Jur. ven. 6. charge the Church in perpetuitie, ſo they may
33. *aide le* make a releaſe, by which any annuitie that char-
Roy, 103. geth the Church or Rectorie ſhall bee extinguiſhed, even in the time of vacation.

7.*H.*6.38.*b.* Alſo, if a man hath an annuitie out of the
8.*H.*6.24. Church of *S.* and afterward this Church is united to the Church of *D.* and after the united
21.*H.*7.24. Church becomes voyd, if the Grantee releaſe in time of vacation to the patron, that was patron of the other Church; that is to ſay, of *D.* and to the Ordinarie, ſuch releaſe ſhall not diſcharge the

the Incumbent, because it was not made to the patron of the Church that was first charged, for although both the Churches are united and become one, yet are their patronages distinct and severall; Moreover, that Interest that the Patron and Ordinary hath in the Rectory, is but Collaterall and *jus disponendi*, and no otherwise, as hath beene formerly said.

For if an *Advowson* discend to an Infant, and the Incumbent be impleaded in a writ of Annuitie, and prayeth ayd of the patron and Ordinarie, and for that, that the patron is within age, likewise prayeth that the *Parol* may demurre undiscussed during his nonage, this shall not bee granted; but the Infant in such case shall bee ousted of his age, because the charge lyeth upon the parson, and not upon the patron, or Ordinary, who are not at any time to enjoy the Rectory themselves, but onely are to have the disposition thereof. 7. *H.* 4. 16. *a.*

Finally, to prove that it is meerely Collaterall: If the patron and Ordinary doe nothing but give licence to the person to charge his Rectory with an Annuity, this shall bee a good grant to charge the Church in perpetuity. For that, that it is not to any other free Tenants a Charge, but to the parson; because neither the patron, nor the Ordinary can have the *Church* themselves, but onely to dispose and bestow the same upon some other; nevertheless, such assent ought to be by writing. 11. *H.* 5. 7. 8. *b.* 14. *H.* 8. 31. *a.*

LECT. 3.

The ſeverall Intreſts of the Patron and Ordinarie, and what it is.

IN the Lecture next before, I have ſet forth to you the right that both the Patron and Ordinary hath joyntly to intermeddle in the Church: Now it remaines likewiſe that I declare their ſeverall intereſts: Therefore at this preſent, I intend to deliver ſomething touching the Collaterall intereſt of the Patron ſole, and after to examine what manner of inheritance an *Advowſon* is, and ſo to referre the intreſt of the Ordinary ſole to a more convenient place when as we ſhall come to ſpeake of Admiſſion and Inſtitution.

What Collaterall Intreſt alone, the Patron hath in the Church, may in briefe thus bee deciphered: firſt, by the Common Law, (before the Statute of *Weſtminſter* ſecond) as hee ought by the opinion of ſome men, to bring his Writ of *Advowſon* of the fifth part, or any leſſe part of the Tythes and oblations of the Church in any ſuit of *Iudicavit*, attempred againſt the preſenter or Incumbent, that hath ſued in the *Spirituall Court* for the recovery of the ſame, and hath cauſed the Patronage in this reſpect, to come into queſtion,

Fitzh. 30. k.

queſtion, or as ſome men thinke he might have had his Writ of *Heres*, as a *Precipe quod reddat advocationem quinque acrarum terræ*, or one acre of Land and ſuch like; For which cauſe the Statute was made, to be a reſtraint for bringing the ſame writ, of any leſſe part than of the fourth part of their Tithes; ſo that the Statute in this behalfe, was but a reſtraint of the Common Law: Which argueth, that the comparing of the Rectorie, tenderh Collaterally to be an impeachment and prejudice to the Patron himſelfe, and ſo importeth a Collaterall Intreſt that the Patron hath to the Church. Againe, by the graunt of the Church the *Advowſon* paſſeth; wherefore *Herle* ſayd in the firſt part of *Ed.* 3. That it was not long ſince, when men knew not what an *Advowſon* was nor meant, but by the Graunt of the Church, they thought the Advowſon to be ſufficiently conveyed in the Law, For, ſaid hee, when they purpoſed to aſſure an *Advowſon*, their Charter ſpecified it in the guift of the Church.

38 *H.* 6. 20 *a. Per Forteſcue.*

Com. 157.

Moreouer, the King being Patron, hath often ratified and confirmed the eſtate of the incumbent in a Rectorie, that an vſurper had preſented; by meanes whereof, he cannot remoue the ſame Incumbent, unleſſe for ſome cauſe hee repeale his Charter of confirmation.

45. *E.* 3. 19 *b*

32. *H.* 6. 32 *a.* 7. *H.* 4. 13. *b.*

Notwithſtanding, if the King recover by a *Quare Imp* : and after confirmeth the eſtate of

Fitzh. fol. 34 *f.* 9, *E.* 3. the Incumbent, that the uſurper preſented, by meanes whereof, he cannot be removed; at the next Avoydance the King ſhall preſent, for the judgement given for him was not at any time executed, which alſo proveth the Collaterall Intereſt that the Patron hath to the Chutch; for no parſons can lawfully confirme, but ſuch as have right to the thing confirmed.

43. *E.* 3. 16. 20. *E* 4. 15, *b* 5, *H.* 7. 17, *b* 6. *H.* 7. 3, *a.* 12. *H*, 7, 16, *a* Ancient Books have held, and that not without reaſon; that an *Advowſon* hath ſuch an affinity with the Church it ſelfe, to which it is granted, and to which it is a Collaterall Intereſt (as hath beene ſaid) that it ſhould paſſe by Liverie of ſeiſen, made at the Ring of the door of the Church; and although by ſuch meanes it paſſe not at this day, being meerely a thing that lyeth in Grant; yet the ſame proveth the Collaterall Intereſt of the Patron to the Church; for this opinion holden in the Bookes, is granted for the like reaſon.

26. *H.* 8. 2. *a* 33, *H.* 6. In a Writ of right of *Advowſon*, the Parſon ſhall bee ſummoned in the Church, or at the doore of the Church: And if a *villeine* purchaſe an *Advowſon* in groſſe, (*Littleton* ſaith) full of an Incumbent, the Lord of the ſame *villein* may come to the ſame Church, and there claime, and the *Advouſon* ſhall be in him; All which things added to the former, ſufficiently proveth the Collaterall Intereſt that the Patron hath to the Church.

LECT. 4.

What manner of inheritance an Advowſon is.

WEE are now to conſider, what manner of Inheritance an *Advowſon* is; wherefore let us conſider, that everie Inheritance is either: 4.

Hereditas { *Corporata*, or *Incorporata*.

Hereditas corporata, is a Meadow, Meſſuage, Land, paſture, Rents, &c. that hath ſubſtance in themſelves, and may continue for ever. *Com.* 176. *v.*

Hereditas incorporata is, Advowſons, Villeins, Wayes, Commons, Courts, Piſcaries, &c. which are and may be appendant or appurtenant to Inheritances Corporate.

An *Advowſon* therefore is Incorporate, of which a man may be ſeiſied, though not of *Demeſne*, yet of Fee, and as of right.

And although great diſputation have beene in our bookes, whether an *Advowſon* may bee holden or lye in tenure, yet the moſt authorities concurreth and are, that any *Advowſon* either in 21, *E*, 3, 5, *a*. 40, *E*, 3, 44. *b*. 42, *E*, 3, 7, *b*. 1, *H*, 4, 16, *a*. 33, *H*, 6, 34, *b*. 5, *H*, 7, 37. 14, *H*, 7, 26, *a*. 15, *H*, 7, 8. 43, *E*, 3, 15, *b* 33, *H*, 6, 35. 5, *H*, 33. *b*.

groſſe or appendant, lyeth in tenure, as well of a common perſon, as of the King. For a *Ceſſavit* lyeth thereof, and ſome have holden that the Lord of whom it was holden may diſtreine (either in the Church-yard, or in the Gleebe) the beaſts of the patron onely, if they happen to bee there found, 33. *H.* 6. *Godred* contrarie: but though the Law be, that there cannot be taken any diſtreſſe, yet the ſame makes not any impeachment of the Tenure, and being parcell of a Mannor or appendant to it, it may bee holden as ſome bookes are, *pro particula illa.*

33. *H.* 6. 35. *b.* 5. *H.* 7. 39. *b.* 15. *H.* 8. *a.* 14 *H.* 4. 2. *b.*

Therefore it is holden and ſaid, that an *Advowſon* is a tenement, and therefore whereas the King hath given licence to an Abbot to amortiſe lands and tenements to ſuch a value, by force whereof hee purchaſeth an *Advowſon*, and this was holden good, ſufficiently purſuing this licence, and therefore in the booke an iſſue was taken, if the ſame *Advowſon* were holden in *Capite*; and therefore, if a man grant a Ward, or *Omnia terra & tenementa*, that hee hath by reaſon of his Ward, if there bee an *Advowſon* holden of the Lord, being Guardian the ſame paſſeth to the Grantee, by the words of *Omnia terras & tenementa.*

5. *H.* 7. 37. *Or.* 38. *b.*

Of an *Advowſon* a *Precipe quod reddat* lyeth verie well, and a Writ of *Dower* ſhall bee maintained of the ſame, by the wives of ſuch as have ſuch inheritance therein as giveth a Dower, as before

20. *E.* 4. 15. *b*

before hath been ſaid, and ſo the huſband of her that hath the inheritance in it ſhall bee Tenant by the Courteſie, although there never were had any preſentation by the wife to it. 5.H.7.38. 15.H.7.18. a.7.E.4.6. Fitzh.29.32

But yet there ſhall not be any deſcent thereof, from the Brother to the Siſter, of the entire bloud, by the maxime of *poſſeſſio fratris, &c.* But the ſame ſhall deſcend to the brother of the half bloud, unleſſe the firſt have preſented to it in his life time, but if he have preſented in his life time, then it ſhall deſcend to the next heire of the entire bloud. 149.d. 5.H.7.5.a. 19.E.2. Fitzh. Qu. Imp.177.

In *Advowſon* is an inheritance and cannot be divided into parts and parcels, for in a Writ of right of *Advowſon*, if the Tenant ſay, that the Demandant is ſeaſed of the ſixth part of the *Advowſon*, this ſhall abate the whole Writ, and yet part thereof may be in ſome ſort conſidered, for there is an uſuall difference taken, betweene *Advocatio medietatis Eccleſiæ*, and *medietas Advocationis Eccleſiæ.*

For *Advocatio medietatis Eccleſiæ*, is where two Patrons be, and every of them having right to preſent a ſeverall Incumbent to the Biſhop, to be admitted into one and the ſame Church, for divers may be ſeverall parſons, and have care of ſoules in one pariſh, and ſuch *Advowſon* is a like in everie of thoſe Patrons, but everie of their preſentments is to the moitie of the ſame Church; and therefore it is called *Advocatio* Fitzh.2.b. 32.H.6.11. b.24.H.6. 15.b. Fitzh. 30.v.

medietatis Eccleſiæ, or as the cauſe falleth out, *Advocatio tertiæ partis Eccleſiæ*, and the like.

7, E, 3, 330, b. Fitzh 31 b. 14, H 6, 15, b. 33, H 6, 11, b. 5, H, 7, 7. b. But *Medietas advocationis Eccleſiæ*, is after partition betweene parceners, for although the *Advowſon* bee entire amongſt them, yet any of them being diſturbed to preſent at his turn, ſhall have the Writ of *Medietate*, or of *Tertia*, or of *Quarta parte Advocationis Eccleſiæ*, as the caſe lyeth.

14, H, 6: 15, b. Fitzh. 11, br. 39. Alſo, if two patrons of ſeverall Churches make union, or confederation of their Churches by the aſſent of all thoſe whoſe conſent is requiſite, the patronage of everie of them ſhall not be but *Medietas Advocationis Eccleſiæ*; becauſe but one Incumbent is onely in this caſe to bee preſented, and not *Advocatio medietatis Eccleſiæ*.

And this difference is onely taken and obſerved in the Writ of Right, which is altogether grounded upon the right of Patronage, But in the *Quare Impedit*, which is onely to recover Damages, no ſuch diverſitie is conſidered, but the Writ is generall, *Preſentare ad Eccleſiam.*

Laſtly, it is to be conſidered, what temporall profits, value or commoditie, this kind of Inheritance is to bee reputed of: It is not by the Law of God, to be beſtowed upon any Incumbent for any need or price; but onely reſerved for ſuch as are worthy thereof. And therefore it is ſaid; *That Guardian in Socage of an Infant,

29, E, 3, 5, b. 9, H, 6 57, a. 32, H, 6, 32, a.

fant ſhall not preſent to any *Advowſon*; becauſe ſuch preſentation is not to bee beſtowed for price; for that, that ſuch Gardian cannot account for the ſame; yet nevertheleſſe, becauſe the patron thereby may advance his friend, it hath bin often eſteemed for Aſſets in Formedon. 5, *H.* 7. 36. *a.* 37. *b.* 12. *H.* 8. *a.*

And as the value thereof may come in queſtion, as a writ of right of *Advowſon*, where the Tenant avoucheth, and the voucheel oſeth; the Tenant ſhall recover in value againſt the vouchee, for every Marke that the Church is worth *per Annum* xij d. So that the thing which of it ſelfe is not valuable, is by a ſecondary meanes made and eſteemed valuable, becauſe that otherwiſe this miſchiefe ſhould enſue thereof, which ſhould be a loſſe without recompence. 8, *E.* 3. *Fitzh. reco. very in value* 11 & 9.

1 By this it appeareth, that it is an inheritance Incorporate.

2 That it lyeth in Tenure.

3 That it paſſeth by name of Tenement.

4 That a *precipi quod reddat* lyeth thereof.

5 That both Tenant in Dower, and Tenant by the courteſie, and in ſome caſe a *Poſſeſſio fratris*, may be thereof.

6 That it is entire by nature, though by accidentall meanes otherwiſe, and in ſome reſpect deviſable.

7 Though it be beſtowed *gratis*, yet it is valuable, for which it is a benefit to advance a friend, and for being injured therein wee ſhall recover damages.

LECT. 5.

LECT. 5.

The word Right, and the word Advowſon explained, and to what Inheritance an Advowſon may bee appendant originally.

IT reſteth at this preſent, for the more ample explication of this word *Right*, (whereas in defining an *Advowſon*, wee ſay it maketh a Right) to ſet forth the diviſions of *Advowſons*, and to proſecute euery part deuided with a full Diſcourſe; that thereby, what manner of right and inheritance an *Advowſon* is, may be the better perceived.

Advowſons therefore, are either appendant or in groſſe, or part appendant part in groſſe.

An *Advowſon* appendant, is a right of Patronage, appertaining to ſome corporall Inheritance; ſo that, hee that hath the ſame Inheritance, is thereby alſo intituled to haue the other as annexed to the ſame; For an *Advowſon* paſſeth alwayes with the Inheritance, to which it is appendant; vnleſſe, there bee expreſſe nomination onely by theſe words (*Vna cum pertinentiis*,) except it be in caſe of the King, where the Statute *De prerogatiua Regis*, *cap.* 15. prouideth expreſſe words to make the ſame to paſſe.

33 *H.*6.4.- *Lit.*20, *E.* 4, 15, *a.* 8.*H.*7.4.*b.*

The originall of *Advowſons* appendant to the begin

beginning muſt be in this manner, ſithence Patronages were wonne and gotten as before hath beene delared; and that either *ratione fundationis dotationis* or *fundi*, were (as it ſeemeth by all conformity of reaſon) the originall foundations of Advowſons appendant; for when Manors were created, either the Land upon which the Church was built was land parcell of the Mannor, or honor to which it is appendant, and hee that was Donor thereof gave the ſame to build the Church upon, and that the *Advowſon* of the ſame Church ſo built, ſhould bee appendant to the ſame Mannour, which is *ratione fundi*. *Com.* 161. *a* 5. *H.* 7, 6.

Or hee that was owner of the ſame Mannor or of any ſuch corporall Inheritance, endowed the ſame Church with parcell of the land of the ſame Mannor, honour, or ſuch like corporall Inheritance, and gave the ſame to the Gleebe of ſuch Church upon which the *Advowſon* by ordinance of the Ordinary, and by the conſent and agreement of all others, whoſe conſents were requiſite in this behalfe, was at the beginning appointed to be appendant to ſuch Mannor, Honour, or other corporall Inheritance, in recompence of ſuch livelyhood, and doration beſtowed upon the Church.

And hereof it enſueth, that if at any time the Church bee diſſolved, the Gleebe and land upon which the Church was built, ſhall returne and eſcheat 5. *H.* 7. 37. *a.* 13. *a.* 11. *E.* 4. 11. *v.* 20. *E.* 4. 15. *b.*

escheate to him or them from whom it was derived and deduced.

Fitzh. 33. *k.* And in like case, upon the dissolution of an Abbey, the same shal not returne to the founder of common right, unlesse some other ordinance be made to encounter the same.

1 Therefore to avoyd confusion in the consideration of *Advowsons* appendant; let us first see, to what sort of Inheritance *Advowsons* may be properly appendant.

2 Secondly, in what manner it is appendant, (that is) if it bee part or parcell of the inheritance to which it is appendant, or if as accident or necessary thereunto.

3 How it may be severed from his principall; and againe, by what meanes it may be thereunto recontinued againe.

1: As to the first, it may bee appendant properly and originally, to things that are onely Inheri-

Com. 170. 5. tances corporall, that are compound: As to an Honour, Earledome, or such like; likewise to

10. *H.* 7. 19. a Castle, more usually to a Mannor; all which principall things, that is to say the Earledome, Honour, Castle, and Mannor, &c. are inheritances compound, made and combined of divers things, and in nature different, being those which the Logicians call *Tota Intigrata.*

2 It may bee appendant to an Acre of Land, or to a Messuage, to a Rectory, Parsonage, Church, or such like; And so one Church may bee

be appendant to another, of which we shall take occasion to speake in the Lectures following.

But at this present, let us see in what sort it may be appendant to a mannor.

Advowson that lyeth in one Countie, may be appendant to a mannor that lyeth in another Countie; and how two or more *Advowsons* may be appendant to one mannor, may be manifested thus. 33. *H.* 6. 4. *b. lib. ult.* 34. *E.* 3. *Quare Imp. Fitzh.* 16.

If hee that in ancient time was seised of a mannor, that extended so large as it was divided into divers parishes, the Lord of the same mannor, either gave out of the same mannor land to build, or to endow everie of the Churches, and so everie of them might bee appendant to the same mannor.

How one *Advowson* may bee appendant to two mannors, may likewise thus appeare.

Suppose that *A.* bee seised of an *Advowson* of the Church of *Dale*, as appendant to the mannor of *Sale*, and that both those Churches by the Ordinarie, and by the consent of both the Patrons bee united, and called the Church of *Dale*, and ordained that the Patrons shall present by turne for ever; these Churches by this union and confederation are made one, and so the *Advowson* entire, and no moities as is betweene Coperceners, Joyntenants, and Tenants in common; and therefore it is appendant to both Mannors, for the Patrons severally presen- 9. *E.* 6. 5. 9. *b.* 20. *Dyer.*

ting, shall present to the same Church as appendant to both Mannors, (that is to say) the one shall present severally to the Church as to his Mannour of *Dale*, and the other also shall present thereto when his turne commeth, as appendant to the Mannour of *Sale*.

14. H. 6. 2. b. Fitz. 39. Yet some are of opinion, and some authorities there are, that each of the same patrons after the same union, is seised *De medietate Advocationis Ecclesiæ*.

And in what manner soever the same *Advowson* be entire, yet is the Parsons interest severall; For if such Incumbent, which is presented after such union made, grant a rent charge out of the Glebe, and one of the Patrons onely confirme, no Distresse (after the death of the Incumbent that granted the rent) can bee taken upon the Glebe, that belongeth to the Glebe of the other Patron, to make the same subject to the charge in perpetuitie; for that, that her confirmed not.

32. H. 6. 64. b. But if the Mannor of *Dale* bee holden of the Mannor of *Sale*, and to the Mannor of *Dale* is an *Advowson* appendant, and that the Mannour of *Dale* hath escheated to the Mannour of *Sale*, so that the Demeanes of the one is become parcell of the Demeanes of the other; yet the *Advowson* shall bee still said appendant to the Mannor of *Dale*, as it was at the first; and the Mannor of *Dale* shall continue still in reputation a

Mannor,

Manner, in reſpect of ſuch things as are appendant thereunto.

The moytie of an *Advowſon* may bee appendant to a Mannor, or parcell of a Mannor. 33.H.6. 11, 12.a.

Alſo, in the pleading of a caſe in *Edw.6.* by *Dyer*, it appeareth that one fourth part of an Advowſon was alleaged to be appendant to the one moitie of a Mannor, and another fourth part of the ſame Advowſon was appendant to the other moitie af the ſame Mannor, and the other two parts were in groſſe: yet nevertheleſſe, an Advowſon (in everie ſuch or the like caſes) cannot be ſaid to be divided properly, for that, that it is entire, if you reſpect the preſentation, and not the right of patronage. For if a man hath an Advowſon, and giveth one part thereof to *A.* and the other part to *B.* & one third part to *C.* yet the Advowſon remaineth entire amongſt them, and if any of them diſturb his companions, they are without remedy, for that they ought to joyn in a *Quare Impedit*, becauſe the preſentation is a perſonall thing, and entire, wherein they ought to agree, but ſeeke how they can ſever in theſe cauſes in a writ of Advowſon. 6.E.6.74.b. 44.Dyer.

Moreover, as touching the right of patronage, if one bring a writ of right of Advowſon, and the tenant pleadeth that the demandant is ſeiſied of one ſixth part, or of ſome one part of the Advowſon, the entire writ ſhall abate, notwithſtanding if it be in bar but for parcell, be-

cauſe the Advowſon is entire, and not ſeverall, by reaſon wherof the demandant cannot abridge his demand.

18.*E.*3.15. And as in the caſes aforeſaid it hath appeared, that an Advowſon of a Church may bee appendant to a Mannor, in like manner may the Advowſon of a Priorie bee appendant to a Mannor.

LECT. 6.

To what things an Advowſon may bee appendant ſecondarily.

IN the Lectures aforeſaid, was ſhewed to what ſort of Inheritances an *Advowſon* may be appendant originally; Now it remaineth to ſhew to what things it may bee appendant ſecondarily.

41.*H.*4. *Fitzh.*88. 33.*H.*6.5. *a.fine.* An *Advowſon* therefore cannot bee appendant to one acre of land, or two acres, but only to ſuch parcels of land as have beene parcell of a mannor, or parcell of any Earldome, Caſtle, or ſuch like Inheritance, to which an *Advowſon* may bee appendant originally; But in what order the ſame may bee appendant to one acre, let us conſider; ſome bee of opinion, that if a man bee ſeiſied of a mannor to which an *Advowſon* is appendant, giveth certaine acres of

5.*H.*6.10.*a.* *Fitzh.feoffments and feof.*115.

the

the ſame Mannor, *una cum Advocatione* to another, in ſuch caſe the *Advowſon* ſhall not paſſe, to the grantee, unleſſe the ſame be by Deed, and ſo the ſame ſhall bee appendant to the ſame acres.

So likewiſe, ſome hold opinion, that if a man be ſeiſied of a Mannor, to which an *Advowſon* is appendant in right of his wife or joyntly with his wife, and maketh a feofement in fee of certaine acres parcell of the demeanes of the ſame Mannor *una cum Advocatione*, and dyeth; that the wife notwithſtanding this, may preſent to the *Advowſon*, before ſhe recontinue the ſame acres, by *Cui in vita*; becauſe as (they thinke) the ſame *Advowſon* is not appendant to the ſame acres, and ſuch alienation is not but during the life of the huſband. 17.E.3.45. 18.19.21. 22.E.3.6.b 7.a. *Thorpe.*

Nevertheleſſe, I doe not perceive any great reaſon, why the Law ſhould be ſo in ſuch a caſe; for if a Tenant in tayle of a Mannor, to which an *Advowſon* is appendant *aliene* ſome of the ſame acres parcell of the Mannor, together with the *Advowſon*, although it bee without Deed, notwithſtanding it is appendant to the Acres, and cannot be recontinned but by Formedon to bee brought for the ſame acres, which caſe in reaſon, being like to the Formedon of the acres and *Advowſon* aliened by the huſband, I know not any difference of Law that ſhould bee betweene them; and therefore if a man bee ſeiſied of a Mannor to which an *Advowſon* is appendant *Fitzh.*3 2, a. 43.E.3. 26.b.or v. *Thorpe.*

dant and make a leaſe for life of the ſame Manor, *una cum advocatione*, if the leſſor enter into the ſame Acre of land for forfeiture, he hath recontinued the *Advowſon*, as appendant to the ſame Acre.

17.*E.*5. *Mombray.*

An *Advowſon* cannot originally bee appendant to a Meſſuage, but ſecondarily it may; therefore if an *Advowſon* be appendant to a parcell of land, which was ſometimes part of the demeſnes of a Mannor, and ſuch like, if a Meſſuage be built upon the ſame parcell of Land, the *Advowſon* ſhall be appendant to the ſame Meſſuage, and if the ſame Meſſuage fall or bee pulled downe, the ſame *Advowſon* ſhall bee againe appendant to the Soyle, as it was before.

*Com.*170.*b.* 16.*H.*7, 13. *b*, & 9.*b.*

So likewiſe, an *Advowſon* may by a ſecondary meanes be appendant to a Rectory, for Vicaridges being not firſt erected (in as much as the Subſtitute cannot bee before the principall) but all at the beginning were parſonages, of the which Vicarages were derived, and that for the moſt part, by the reaſon of many Impropriations of Benefices, to the houſes of Religion, and Spiritual corporations, which were not of themſelves in all poynts fit for the function and cure of ſoules.

17.*E.*3.31.*a* 30.*E.*4.6.*b.* 11.*H.*6.32.*b* 5.*E.*2.*Qu. Imp.*165.& 178.7.*E.*3. 12.*a.*31.*a.* 16.*E.*3.*m. d. fait.* 11. 6.5.*E.*3.26. *b.*11.*H.*6,18 *b*, 31.*H.*6. 14.*a. Fitzh.* 33.*v.t.* 34. & 35.*f.*

The reaſon is, becauſe that the *Advowſon* of a Vicarage ſhould bee alwayes appendant to the Rectory of a parſonage, ſo that hee that

is

is Parſon, or *Perſona imperſona*, (as they call him) of this Church, is of common right Patron of the Vicaridge, of the ſame Church; except, ſome other ſeuerall ordinance at the beginning of the endowment of the ſame Vicaridge were made to the contrary.

And therefore. by the Graunt of a parſonage wtih all the hereditaments thereto belonging, the *Advowſon* of a Vicaridge paſſeth too the Grantee. 2. *E.* 3. *Grants*, 89. & 56. *Dyer*, 35, 7. *E.* 4. 61. *a*, 75, *a*:

In the ſame manner it ſhould be, if the Vicaridge were endowed, ſo there be a parſon and a Vicar both preſented into one Church, as by the Law there may well be; but if the Vicaridge become voyd, and he that is Parſon hauing the *Advowſon* of the Vicaridge (as of common right hee ought) preſent one too the ſame Vicaridge by the name of parſon, who is admitted and inſtituted accordingly, by ſuch preſentation hath the ſame Vicaridge loſt the aforeſaid name, and is becommed a Parſonage, *tamen quere* if the firſt Parſonage remaine, and if one of thoſe parſonages (if they both continue) be appendant to the other; but it ſeemeth by the Booke of 11. *H.* 6. that there ſhould be but one parſonage, and the Vicaridge extinct. 11. *H.* 6. 18 *a*, & 32. *b*. 17. *E.* 3, 51. *a* 11. *H.* 6. 18 & 32. *b*. 11, *H.* 6. 18 & 22.

An *Advowſon* of a Church or Chappell, cannot originally bee appendant to another Church or Chappell; for that, that things of 8, *H.* 7. 16 *Com.* 169. *b*

one nature cannot be originall appendant each to other. But notwithſtanding, ſecondarily the *Advowſon* of a Church or Chappell may bee appendant to another Church or Chappell.

43. *E.* 3. 30 *a. Fitzh.* *Qu. Imp.* 13 As if the *Advowſon* of a Church or Chappell bee appendant to one acre of Land, that was ſometimes parcell of a Mannor, or ſuch like; and after a Church or Chappell be built vpon it, the laſt new erected Church ſhall bee appendant to the aforeſaid Church.

22. *E.* 3. *Fitzh. ayd le Roy*, 103. An *Advowſon* may be amortified to a Church or Chappell, and if it be recouered and loſt by Default, the Parſon thereof may haue a Writ of right.

Ibid. Fitzh. 103. And an *Advowſon* may be parcell and part of a Deanerie, and if the ſame bee in any free-Chappell of the King, if the Deane be impleaded, he may of this haue ayd of the King. And thus much concerning Inheritances, to which an *Advowſon* may be appendant.

LECT, 7.

In what manner Advowſons are appendant to a Mannor.

NOw it reſteth, that I determine in what manner *Advowſons* are appendant. And firſt of all, if the *Advowſon* be part or parcell of the Inheritance, to which it it is appendant and whether it bee onely accident or incident thereunto. 1.

Secondly, if an *Advowſon* be appendant too a Mannor, that conſiſteth of Demeanes and ſervices, in reſpect both of the demeanes and ſeruices, or if it ſhall be ſaid appendant to a Mannor in reſpect onely of the Demeſnes, in as much as the Demeſnes are one corporall Inheritance, and ſuch part of the Mannor as onely lyeth in manuell occupation. 2.

1 As concerning the firſt, the Authorities of our Bookes are diuerſly deuided; ſome tending to one effect and ſome to another, our beſt courſe therefore is to conſider the Arguments, and to giue cenſure with that which ſeemeth moſt agreeable with Law. Some hold that an *Advowſon* appendant to a Manuor and the like, is eyther part or parcell of a Mannor, Honour, &c. or other Inheritance to which it is appen-

dant. And they ground themselues upon the authorities of 43 *R.*3. 22.*a.b.* where iit was adjudged that the graunt that King *H.* the 3. made to *The-*
Ratio. 1. *nel Marshall* of a Mannor, to which an *Advowson* was appendant, without these words (*cum pertinentiis*) and without any mention of the *Advowson*; yet notwithstanding, the *Advowson* passed in case of the King before the statute of *Prærogativa Regis*, *Cap.* 15. And so likewise it is in the case of a common parson at this day, although in the 8 *H.*7. 4 & the opinion of some others, in the 5 *H.* 7. 38. *b.* be against it, upon
22. *H.* 6. 33 which they inferre; that an *Advowson* is parcell
lib. fund leg. of a Mannor, for so expressely is the opinion
7°. of others in the same booke of 5. *H.* 7. 38. *b.*

2. Secondly, in the 9, *H.* 6. 28. *b.* and in the 38.
Ratio. 2. *H.* 6., 33. *a.* in the Abbeyes of Scyons case, the difference is agreed for Law, that if the King be seised of a Mannor to which an *Advowson* is appendant, and granteth the same Mannor, and
9. *H.* 6. 28. or 8. *b.* in the grant the words of the Pattent are *dedimus & concessimus*, the Mannor of *D.* expressing not the *Advowson* in the clause of the grant; if afterward in the *habendum* there bee, *habendum cum advocatione* of the Church of *D.* the *Advowson*
38. *H.* 6. 33 *a*, 39. *b.* passeth by such grant, although it be not comprehended in the clause of the grant; but if the King grant the Mannor of *D.* to which no *Advowson* is appendant *habendum cum advocatione Ecclesiæ de S.* this *Advowson* passeth not; for

that

that, that it is mentioned after the grant, the reaſon of which difference they thinke to bee, becauſe in the firſt caſe, the aforeſaid *Advowſon* appendant is parcell of the Mannor, which is not ſo in the laſt caſe in the 8. *H.* 7. 3. *b.* and likewiſe in the 10. *H.* 7. 19. *a.* it is ſaid, that an *Advowſon* appendant is a compound thing, to the compoſition whereof, divers things are requiſite, all which things com mixt, make the Mannor and euery of them is parcell thereof, for as Rent cannot be Land, ſo Land cannot bee an Advowſon *nec è converſo*, yet euery of theſe things of diuers natures, make the Mannor, and are part of the Mannor, ſaith *Keeble*. 10. *H.* 7. 19. *a*, Keeble.

And if a man demand a Mannor by his Writ and an Advowſon is appendant thereunto, hee ought to make an exception of the Advowſon, which ſeemeth to prove that an Advowſon is parcell of a Mannor, vpon the other part thoſe which affirme that an *Advowſon* is not parcell, but onely appendant to the Mannor, denyeth that an Advowſon lyeth in Tenure; for that, that only the principall thing is holden, and not the thing appendant to ſuch principall; As Leates, Courts, Eſtreates, Wayfes, and the like, for (ſaid they) if an *Advowſon* appennant be by grant ſeuered from the Mannor, it is holden by ſuch and the ſame ſeruices as it was holden by before, for that, that if the *Advowſon* be ſeuered it ſhould be holden *pro perticula*, thē the Ser- *Ratio.* 3. 5 *H.* 7. 36, *a* & 38, *a*

vices ſhould be encreaſed, and ſo double Services ſhould be due for one thing, for ſo he ſhould haue the entyre ſeruices for the Mannor, and alſo Service for the *Advowſon* beeing ſeuered, which is repugnant to reaſon.

In this variety of opinions; I thinke it were moſt conformable to reaſon, to ſay that an *Advowſon* is not part nor parcell of a Mauuor, but rather appendant to a Mannor, for the better entendment whereof, the Law of *England* calleth thoſe ſorts of Iuheritauces which were annexed to others, and what the Logicians call *Adjuncta*, by theſe names, that is to ſay; Incidents, a ppurtenants, appendants, and regardants, of which termes of Law (*Regardant*) is propperly of *Villeines*, and the word (*Appendant*) of a Common or an *Advowſon*; of which two an Advowſan is ſeparable, but a common appendant is not in any caſe ſeparable, for none can haue common appendant, but hee onely that hath the Land to which the common appendant is appendant. The other two words *Incidents* and *Appurtenances*, may generally be affirmed of all thoſe ſorts of Inheritances that may in any manner be annexed to other things, for ſo a Mannor with his appurtentnces, may be intended of Advowſons, Commons, Villeines, Waifes, Eſtrayes, and the like, which are ſaid to be Appurtenances to a Mannor, likewiſe the word *Appurtenant* may be applyed to a Court,

4.E.4,36,b.

Lit.184.

9.E.4,39.b

5,H.7.

5.H.,7.4.b

Court, Meſſuage, or Gardein, that are ſaid to be appurtenant to the Meſſuage, the word incident properly ſignifieth thoſe things annexed which are not knowne by the precedent names of appurtenants or appendants, and yet are notwithſtanding annexed to other Inheritances, and in ſuch ſort a Court-baron is incident to a Mannor, a Court of Pipowders to a faire, fealtie to Homage, homage to Eſcuage; ſo likewiſe a *Corrody* is incident to a Founderſhip; and a gaine, of thoſe ſome are ſeuerable, as the Corrodie from the Founderſhip, ſome are inſeuerable, as the Court-barron from the Mannor, except onely in caſe of the King, who hath power to ſeuer them. But that is called a part or parcell, which is a portion, and required to ſome compoſition of entyre and compound things, as the Demeanes and ſervices are part of a Mannor, the Gleebe and the Tythes are part of the Rectory, ſo that theſe are not to be called Incident, Appendants, Appurtenances, but parts and portions of theſe compound things, of which they are ſaid to be part, parcell, or portions, and are required neceſſarily, to the framing of ſuch entyre thing, of which they are parts and portions, & hereof it followeth that an *Advowſon* appendant is not any part, parcell or portion of a Mannor, no more then a common is part of that thing to which it is appendant, ſo that the word it ſelfe of an *Advowſon* appendant is ſufficient

21 *E.* 4. 32. *b*
19. *Aſſ* 10
8. *H.* 7. 6. 1.
E. 4 10. *a.* 18
H. 7 12, *b*
11. *H.* 6, 81
21. *aſſ.* 53
Br. incid. 34
12. *E.* 288.

to

to ſet forth and declare the ſame, to bee no part but appendant onely, as the words importeth.

1. *Reaſon Anſwered.* Wherefore the firſt reaſon of the aduerſe part may thus be anſwered. The Bookes before mentioned namely, 43.*E.*3.22.*a.*45.*E.*3.12,*b.*22.*H.* 6.33.*a.* which are to this effect, that an *Advowſon* appendant may paſſe by the grant of a Mannor without ſaying (*cum pertinentiis*) in the caſe of a common Parſon, and ſo likewiſe in the caſe of the King before the Statute of *prerogatiua regis*, proueth not that an *Advowſon* is part or parcell of a Mannor, for this being a thing appendant may aſwell paſſe with the words (*cum pertinentiis*) as the things that are parts or portions of the ſame entire thing paſſeth.

*Fitzh.*1.81 For if a man grant common of Eſtouers to be burnt in ſuch a Mannor, of the grantee by the grant of the Mannor, this common paſſeth, without the words *cum pertinentiis* for by the feofment made of the Mannor without deede, all appurtenances paſſe by *Finchdens* opinion, as *Fitzh.* abridgeth it, although it be not in the report at large, and for the argument of thoſe in the time of *Hen.* the 7. before remembred, wee ſay for that, that an *Advowſon* appendant paſſeth by the grant of the Mannor it is no good conſequence, for the reaſon aforeſaid.

44,*E*,3, *bre*,581, 5,*H*,7, 37 *b*,

9,*H*,6, 28, *b*, 33. *H*,6, 39. The ſecond reaſon anſwereth the difference in *H.*6. where the *Advowſon* is granted before the *habendum* and where not, that it is not any proofe

proofe that the Advowſon appendant is parcell of the Mannor, for *Pryſot* ſaith, that things in groſſe or ſeverall being named after the *habendum*, cannot paſſe with the firſt things ſpecified in the clauſe of the Grant, but things appendant or appurtenant to the premiſſes of the Grant may very well paſſe; although the appurtenants be ſpecified after the *habendum*. 38. *H.* 6. 38. *a.*

As concerning the exception of an *Advowſon* appendant to be made in the Demand of a Mannor, the ſame is not any proofe, that the *Advowſon* is part of the Mannor, for the opinion of *Stone* is, that by the Demeſnes of a Mannor, or by the Demeſnes of the moity of a Mannor, (as the caſe is there) without the words (*cum pertinentiis*) the Advowſon appendant cannot bee recovered. 3 *Reaſon Anſwered.* 19. *E.* 3. *Fitzh. br.* 884. *Regiſt.* 228. *br. incid.* 38

LECT. 8.

If an Advowſon appendant that conſiſts of Demeſnes and Services, ſhall be appendant in reſpect of the Demeſnes onely, or in reſpect of the Demeſnes and Services.

AT this preſent it remaineth, to determine, if an *Advowſon* appendant to a Mannor is appendant, in reſpect that it conſiſteth of Demeſnes and Services; or if it ſhall bee appendant to a

Mannor, in reſpect of the Demeſnes onely, in as much as the Demeſnes are one corporall Inheritance, and ſuch part of the mannour, as onely lyeth in manuell Occupation.

This queſtion was of late time largely diſputed, and at the laſt, upon grand deliberation learnedly determined, in the *Common Pleas*, in a *Quare Impedit*, betweene *Gyles Long* Plaintiffe, and one *Hening* Patron, the Biſhop of *Gloceſter* as Ordinaria, and *Hadler* as Clarke, and the ſame is there among the Rolles of *Paſche* 31. *El. Rot.* 2024. which I have ſet here neceſſarily in briefe, and being thus.

P. 39. 39. *Eliz. Rot.* 2024. *Longs caſe, in Com. bank.*

A Feofement in Fee was made of the mannor of *Frembillet*, and the Advowſon thereto belonging, and Livery of Seiſin was made in the Demeſnes, in *anno* 7. *El.* and after in *anno* 17. of her Reigne the Advowſon was granted to one *Ranger*, and after in the 25. *El.* one *Boyter* being tenant of the ſame Mannor attorned to the Feoffee, then the Church became voyde, and if the Feoffee or the Grantee ſhould preſent was the queſtion, for the better entendment whereof, we will firſt ſee what can bee ſaid upon both parts.

That it is appendant onely in reſpect of the Demeſnes, thoſe or the like authorities or reaſons may be produced.

It

It is ſaid, that an Advowſon appendant to a Mannor, cannot be appendant to a Rent, or Service of the ſame Mannor, but onely to the Demeſnes, whereof onely if a man hath a Mannor to which an Advowſon is appendant, and granteth the Demeſnes *cum pertinentiis*, the Advowſon paſſe appendant thereunto; ſo likewiſe, if he grant the Demeſnes, excepting the Advowſon, the Advowſon is now becommed in groſſe. 5 *E.* 6. 70. *Pl.* 41. *Dyer*

If a man ſhonld have a Mannor, and black acre that was holden of the ſame Mannor eſcheateth, ſo that the ſame acre is become now parcell of the Demeſnes of the ſame Mannor, if hee that is ſo ſeiſied of the ſame Mannor, grant all the Demeſnes, excepting black acre, and the ſame Advowſon, the Advowſon is become in groſſe, and yet it is a Mannor notwithſtanding, for now black acre is onely the Demeſnes which together with the other ſervices cauſe the mannor to continue, nevertheleſſe the *Advowſon* is become in groſſe, for that, that it was appendant onely to the Demeſnes of the mannor, which were aliened, and cannot now bee appendant to black acre: becauſe it was never before appendant to the ſame, in as much as appendancie is onely granted upon continuance and preſcription, and not upon the ſame reaſon.

If hee that is ſeiſie of a Mannor, whereof

blacke acre is holden, and the ſame Eſcheateth, and he granteth the ſame blacke acre, (*una cum Advocatione*) the Advowſon paſſeth not the appendant to the acre, but in groſſe, as aforeſaid; but if in the two aforeſaid caſes, a man were ſeiſie to a Mannor before the ſtatute of *Weſtminſter* the third, *De quia emptores terrarum*; with an *Advowſon* thereto belonging, and give certaine acres parcells of the Demeſnes of the ſame Mannor to divers perſons, to bee holden of the ſame Mannor, if afterward ſuch acres eſcheate, and the Lord granteth the reſidue of the Demeſnes excepting the acres ſo eſcheated, and the *Advowſon*: the *Advowſon* is ſtill appendant to the ſame Mannor: becauſe it was appendant to the ſame Acres, before they were given to be holden of the mannor.

If a man were ſeiſed of a Mannor to which an *Advowſon* is appendant, and before the Statute of *Weſtminſter* the third were likewiſe ſo ſeiſied of other acres of land in groſſe, and not parcell of the ſame Mannor, if he had given the ſame acres of land to divers perſons to bee holden of the ſame Mannor, (as he might then have done) and after the ſame acres of Land eſcheated, now are they parcell of the Demeſnes of the ſame Mannour, although they never were ſo before, & after the Lord of the Mannor granted all the ancient and former Demeſnes of the ſame Mannor, unleſſe one acre, this acre and the other

other acres eſcheated maketh now the Demeſnes of the ſame Mannor, and the *Advowſon* appendant, is ſtill appendant to the whole Mannor, but yet it was ſo appendant in reſpect of the one acre, that was parcell of the ancient Demeſnes of the ſame Mannor, and if the Lord intend at any time to ſever this from the Mannor, and ſtill to keepe it appendant to no acre, but onely to that which was parcell of the Demeſnes of the Mannor, all which reaſons prove that the *Advowſon* is appendant more in reſpect of the Demeſnes than otherwiſe.

Of the other part, thoſe caſes prove that an *Advowſon* appendant to a Mannor is not appendant to any part of the mannor, but to the entirety, for it is an entire thing; and therefore if a man hath a Mannor to which an *Advowſon* is appendant, if he enfeoffe *I. S.* of the ſame Mannor, and maketh Liverie of the Demeſnes, and before the Attornement of the Tenants, the Church becomes voyd, the Feoffee ſhall not preſent becauſe he hath not the Mannor to which the Advowſon was appendant; but if the tenants afterward attorne within ſix moneths, after the avoydance he may very well preſent thereunto.

So likewiſe in the former caſe, if the Feoffor or the Eſtranger preſent before the Attornment of the Tenants, yet if afterward Attornment be had within the ſix moneths after the avoy-

dance, the Feoffee may bring and maintaine his *Quare Impedit*, and ſo recover his preſentation, which proveth that the Advowſon is appendant to the whole Mannor, as it is entire, and not by reaſon of the Demeſnes onely, for the determination of the Law is this; It is true that the Advowſon in ſuch caſe is appendant to the entire Mannor, and not to any part thereof, during ſuch temps, as it remaines a Mannor without alteration, or diſ-joyning the Advowſon from it; nevertheleſſe, if you will diſſolve the Mannor and ſever the Advowſon from it, and yet deſire to have the ſame appendant, then it cannot bee appendant to any part of the Mannor, but onely to ſuch Lands as were of the ancient Demeſnes of the ſame Mannor; where-
Judgement. fore in the firſt caſe Judgement was given, that after the Attornment had, the Advowſon paſſed to the Feoffee of the Mannor, as appendant to the entire Mannor, and that the Grant made in the meane time betweene the liverie of the Demeſnes, and the attornment of the Tenants, was voyd, and that the Advowſon paſſed not thereby to the ſame Grantee of the Advowſon, but is (by the Attornment, by which the ſervices paſſed) made appendant to the entiretie in the hands of the Feoffee.

LECT. 9.

How an Advowſon may be ſevered from the principall, and by what meanes it may be reconnexed thereunto againe.

IN the two laſt former Lectures hath beene declared at latge ; Firſt, to what kinde of Inheritance an *Advowſon* may be properly appendant, and then in what manner it may be appendant: Now remaineth the third thing then treated of, that is to ſay, how it may be ſundred from the principall ; and againe, by what meanes it may be thereto annexed by entry or without entry into its principall.

It may be ſundred either rightfully, or by a rightfull conveiance, of which wee ſhall ſpeake more at large, when we declare the nature of an *Advowſon* in groſſe, and of that which is partly in groſſe, partly appendant, whether it may bee ſundred in a wrongfull manner, as by a *tortious act*, that is to ſay, by Diſſeiſin of the Mannor, to which it is appendant, or by a wrongfull aſſurance as by diſcontinuance, or other wrongfull diſpoſition thereof. As for uſurpation wee ſhall ſpeake thereof in a place more convenient afterward at large; if therefore a man be diſſeiſed of a mannor to which an *Advowſon* is appendant, and the *Advowſon* becomes voyd the

Mannor

dance, the Feoffee may bring and maintaine his *Quare Impedit*, and ſo recover his preſentation, which proveth that the Advowſon is appendant to the whole Mannor, as it is entire, and not by reaſon of the Demeſnes onely, for the determination of the Law is this; It is true that the Advowſon in ſuch caſe is appendant to the entire Mannor, and not to any part thereof, during ſuch temps, as it remaines a Mannor without alteration, or diſ-joyning the Advowſon from it; nevertheleſſe, if you will diſſolve the Mannor and ſever the Advowſon from it, and yet deſire to have the ſame appendant, then it cannot bee appendant to any part of the Mannor, but onely to ſuch Lands as were of the ancient Demeſnes of the ſame Mannor; where-
Judgement. fore in the firſt caſe Judgement was given, that after the Attornment had, the Advowſon paſſed to the Feoffee of the Mannor, as appendant to the entire Mannor, and that the Grant made in the meane time betweene the liverie of the Demeſnes, and the attornment of the Tenants, was voyd, and that the Advowſon paſſed not thereby to the ſame Grantee of the Advowſon, but is (by the Attornment, by which the ſervices paſſed) made appendant to the entiretie in the hands of the Feoffee.

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IN the two laſt former Lectures hath beene declared at latge ; Firſt, to what kinde of Inheritance an *Advowſon* may be properly appendant, and then in what manner it may be appendant: Now remaineth the third thing then treated of, that is to ſay, how it may be ſundred from the principall ; and againe, by what meanes it may be thereto annexed by entry or without entry into its principall.

It may be ſundred either rightfully, or by a rightfull conveiance, of which wee ſhall ſpeake more at large, when we declare the nature of an *Advowſon* in groſſe, and of that which is partly in groſſe, partly appendant, whether it may bee ſundred in a wrongfull manner, as by a *tortious act*, that is to ſay, by Diſſeiſin of the Mannor, to which it is appendant, or by a wrongfull aſſurance as by diſcontinuance, or other wrongfull diſpoſition thereof. As for uſurpation wee ſhall ſpeake thereof in a place more convenient afterward at large; if therefore a man be diſſeiſed of a mannor to which an *Advowſon* is appendant, and the *Advowſon* becomes voyd the

Mannor

Mannor ſtill remaining in the hands of the Diſ-
Bracton.lib. 2.fo.55.C. ſeiſor, this was ancient Law as *Bracton* ſaith, that he ſhould not have preſented to the *Advowſon* untill he had recontinued or made his entrie into the Mannor, becauſe ſaith hee, *Quod ſeſinam habere non poterit quis de pertinentiis, antiquam acquiſeret principale.* But at this day the Law is contrary, ſo that if a man be ſeiſie of a Mannor, and the entrie of the Diſeiſſe being lawfull the Advowſon becommeth voyd, the Diſſeiſſee may preſent to the Church, before his entry into his Mannor, but if the Diſſeiſor bee ſeiſie of a Mannor by diſſeiſin, to which an Advowſon is appendant, and the Church becomes voyd, ſo that the diſſeiſor preſenteth, whereupon the Clarke is admitted, inſtituted, and Inducted, it ſeemeth that the diſſeiſee in this caſe ſhall not have his *Quare Impedit*, to recover his preſentation, unleſſe he firſt enter into the Mannor to which the Advowſon was appendant, and though hee enter, yet he ſhall be driuen to his action.

Yet if a man be ſeiſie of a Mannor, to which an *Advowſon* is appendant and bee diſſeiſied of the ſame Mannor and the Church becomes void, and the Diſſeiſor preſenteth one that is admitted, Inſtituted, and Inducted, and ſo continueth parſon ſometime after, if afterward the *Advowſon* become voyd, now is not the *Advowſon* ſo gained by ſuch uſurpation, but if that I that was deſeiſied enter into the Mannor, I may a-

gaine

gaine preſent to the *Advowſon*, becauſe the former uſurpation was a meane betweene the diſſeiſin and the re-entrie, by which re-entry the Diſſeiſors eſtate as well in the *Advowſon* as in the Mannor, is clearely defeated. But it is otherwiſe of an *Advowſon* in groſſe, in which caſe the Patron ſhall be driven to his Writ of right, ſo likewiſe if I be ſeiſed of a mannor, to which an *Advowſon* is appendant, and afterward the Church becomes voyd, and I preſent and be diſturbed, and after I be deſeiſed of the Mannor, here I ſhall bring my *Quare Impedit* and recover my preſentation, before I enter into the ſame Mannor.

And ſo much is ſaid, where the entrie of him that hath right is lawfull in the principall, but where the entry is not lawfull there he ſhall not preſent to the Advowſon, unleſſe recontinuing the principall; and therefore if a man be ſeiſied of a Mannor to which an *Advowſon* is appendant, and be diſſeiſed, if the Diſſeiſor die ſeiſed, and the Church become voyd, the diſſeiſee ſhall not preſent to the Church, unleſſe hee firſt recover the Mannor.

If Tenant in tayle be ſeiſed of a Mannor, to which an *Advowſon* is appendant and maketh diſcontinuance of the ſame Mannor, and after dyeth, if the Church become voyd the iſſue in tayle ſhall not preſent thereunto, untill hee hath recovered the Mannor by Formedon to which

the *Advowſon* was appendant.

Likewiſe if a man bee ſeiſied of a Mannor in right of his wife, &c. and both diſcontinueth the Mannor with the *Advowſon*, and the Husband dyeth, if afterward the Church become voyd, the wife ſhall not preſent untill ſhee hath recontinued the Mannor by *Cui in vita*, but foraſmuch as the Statute of the 30. *H.* 8. 28. giveth in ſuch caſe power to the wife, or her heires, to enter into the Land ſo aliened.

The Law at this preſent day, muſt of neceſſitie be taken, that the wife or her heires in the former caſe may preſent, without recontinuance of the Mannor, for that, that the ſame Statute ordained then, that ſuch alienation, &c. Feoffement act or acts, made or done by the Husband, ſhall not bee nor make in any manner any diſcontinuance thereof, or be prejudiciall to her or her heires.

The former rule hath an exception in this manner, yet notwithſtanding the entrie being not lawfull in the principall; yet if the *Advowſon* be ſevered, and in any manner cannot be recovered, then may the partie wronged notwithſtanding preſent without recontinuance of the principall; As if a man before the Statute of the 32. *H.* 8. 28. be ſeiſied of a Mannor in right of his Wife, to which an *Advowſon* is appendant, and giveth to an Eſtranger the ſame Mannor, or parcell thereof, with the *Advowſon* in fee, and dyeth afterward,

afterward, the Church becommeth voyd, and the Eſtranger preſenteth, and then alieneth the Land to another in fee, ſaving the *Advowſon*, and now the Church becomes voyd, the wife in ſuch caſe may preſent to the Church without any recontinuance of the Land diſcontinued to which the Advowſon was appendant.

Quære therefore in the 5. *H.* 7. 36. where it is holden that if there be Tenant in taile of a Mannor to which there is and *Advowſon* appendant and he alieneth the Mannor, with the Advowſon in fee, and the Diſcontinued granteth the Advowſon to another in fee, ſevering it from the Mannor; the iſſue in taile ſhall not preſent until ſuch time as he hath recontinued the Mannor, nevertheleſſe if a remitter be of the principall, hee that is ſo remitted may preſent to the Advowſon the next time that it becommeth voyd, notwithſtanding any uſurpation thereof before had: For if Tenant in taile be of a Mannour to which an Advowſon is appendant and diſcontinueth the ſame, and the Diſcontinuee granteth the Advowſon to another in fee, and afterward re-enfeofeth the Tenant in taile of the Mannor, who dieth ſeiſed of the Mannor, now his heire ſhall preſent to the Advowſon when it becommeth voyd; and if hee bee diſturbed hee ſhall have a *Quare Impedit*, becauſe he is remitted to the Mannor, and hath not any remedy otherwiſe to come to the *Advowſon*.

But vpon the other part if tenant in tayle be seisie of a mannor to which an *Advowson* is appendant and discontinueth the same, and afterward the Church becomes voyde, and the tenant in tayle presenteth to the Church by vsurpation, it seemeth by the better opinion, of the 5. *H.* 7. 36, 38. that hee is not remitted of the *Advowson*, for that, that his ancient right therevnto was to an *Advowson* appendant, but now it is in grosse; But if the tenant in tayle had aliened the same to an estranger in fee, and after dyeth; notwithstanding that, he take the rents and services, that afterward discendeth to the issue, yet is the issue therevnto remitted; because such rents and services are parcell of the mannor and not appendant.

And so it was likewise before the said Statute of 32. *H.* 8. if a man bee seisie of a Mannor which is an *Advowson* appendant in right of his wife, and discontinueth the same Mannor, and after the Church becomes void, and he presenteth to the Church by vsurpation, and dyeth; having issue by the wife, the wife also dyeth, the issue in this case is not remitted to the Advowson, for the reasons before shewed; hereof it ensueth likewise, as before partly hath appeared, that in all cases where there is a Mannor, to which an Advowson is appendant, and the Mannor with the *Advowson* is aliened with wrongful conveyance

ance, and the entrie of him that hath right is not taken away, there may hee preſent to the Church without recontinuance of the Mannor, to which the *Advowſon* is appendant; and therfore if a man make a leaſe for life of a Mannor to which an *Advowſon* is appendant, if the Leſſee for life make a Feofment in fee, of the Mannour and *Advowſon*; and after the Church becommeth voyd, the Leſſor may preſent to the Church, without any entrie made into the Mannour, becauſe his entrie was lawfull into the Mannour. But if it be a rightfull purchaſe, that requireth ſome other act to be done, for the execution and perfection of the ſame, then cannot the perfection thereof bee accompliſhed in the acceſſarie, that is to ſay, in the Advowſon before the ſame bee performed in the principall; wherefore it is holden by the better opinion in the 9. *E.* 3. 43. 839. that where a certain chamber was exchanged for certaine acres of land, with an Advowſon appendant to the ſame acres of land: to perfect this exchange, hee that had the acres and Advowſon in exchange, could not preſent to the Advowſon untill he had made his entrie into the acres. And thus much hath been ſaid, how an Advowſon appendant may be ſevered from the principall, and againe recontinued with re-entrie, or without entrie into the ſame.

LECT. 10.

Of Advowſons in Groſſe.

AS concerning our firſt purpoſed Diviſion, to be either appendant, or in groſſe, or partly appendant, or partly in groſſe; I have before proſecuted the firſt part, that is to ſay; The natures of *Advowſons* appendant, now therefore it reſteth to ſpeake ſomewhat of *Advowſons* in Groſſe.

The originals of *Advowſons* in Groſſe, ſeemeth to be grounded upon two occaſions; The firſt is, that *Advowſons* in groſſe at the beginning begun originally by one of the before-ſpecified three manner of wayes; which is, *Ratione fundationis*, for when they were agreed, that he that founded the Church, and was at the coſt of the building thereof, ſhould be Patron thereof; hee cannot bee Patron of this by reaſon of any Land or Dotation, by which his patronage might be appendant, but onely by reaſon of the building, which being a patronage without Land, muſt of neceſſitie bee the originall cauſe of Advowſons in groſſe.

The ſecond occaſion of *Advowſons* in groſſe, was the ſundering and ſeverance of them from the principall to which they were firſt appendant, and ſo by Graunt or other Conveyance they became in groſſe, which before were appendant;

pendant; wherefore how they may be ſundred by Graunt, now let us conſider, and ſee what queſtions in our Bookes have been moved hereupon. In the 33.*H.*8.44. 48.112: *Pyer* of the opinion that *Shelly* is, That if a man bee ſeiſied of a Mannor, to which an *Advowſon* is appendant and alien one acre parcell of the Mannour, and by the ſame Deed, after granteth the *Advowſon*, that the *Advowſon* ſhall paſſe in groſſe; otherwiſe, hee thought the Law to bee as if the Feofment were made of the entire Mannor; yet this difference agreeth not with the opinion of *Hill*, who thinketh that in both caſes, the Advowſon paſſeth appendant.

Yet I thinke, if a man be ſeiſied of a Mannor to which an *Advowſon* is appendant, and after granteth by his Deed one acre parcell of the Mannor, and by another Deed the *Advowſon*, and deliver eth both thoſe Deeds at one time to the Grantee, although in conſtruction of Law, both thoſe Deeds are but one Deed; yet the Advowſon paſſeth in groſſe clearely, and not appendant to the acre.

If a man be ſeiſied of a Mannor with an Advowſon thereto appendant, and granteth the Mannor to *I.* and *S.* excepting one acre, the Advowſon not being ſpecially ſpoken of, in the Grant, it ſtill remaineth to this acre excepted; For ſaith *Bracton*, *Si partem fundi dederit quis quamvis cum omnibus pertinentiis ſuis, & partẽ retinuerit*,

retinuerit, non propter hoc transfertur advocatio ſed cum donatore, remanebit licet minimam partem fundi retinuerit non enim transfertur cum aliqua parte fundi niſi ſpecialitur transfertur.

If hee which hath a Mannor to which an Advowſon is appendant giveth one part of the Mannor, with one part of the Advowſon to *A.* and the ſecond part of the Mannor with the ſecond part of the Advowſon to *B.* and the third part of the Mannor, with the third part of the Advowſon to *C.* in fee, yet notwithſtanding this Diviſion, the Advowſon remaineth in common, appendant.

If a Mannor to which an advowſon appendant is belonging, diſcend to an heire, and if hee grant the moity or third part of the Mannor *cum pertinentiis*, no part of the Advowſon paſſeth; but if he aſſigne Dower to his Mother, of the third part of the Mannor, *cum pertinentiis*, ſhe is hereby endowed of the third part of the Advowſon, and may have the third preſentment.

If a man bee ſeiſied of a Mannor or one acre of Land to which an Advowſon is appendant, and maketh a leaſe of the Mannor or acre, for terme of Life, excepting the Advowſon, the Advowſon is in groſſe, and cannot bee appendant to the reverſion of the Mannor or acre.

But if I leaſe the Advowſon for terme of life,

life, reſerving the Mannor in my hands, yet the reverſion of the Advowſon remaineth alwayes appendant to the Mannor, or to the acre of Land.

For if a grant be made by me of a Mannor or acre, with the appurtenances, the reverſion of the Advowſon paſſeth, for the reverſion of an Advowſon may be appendant to a Mannor or acre in poſſeſſion, but the Advowſon in poſſeſſion cannot be appendant to the reverſion of an acre or of a Mannor.

Alſo, if a man hath a Mannor to which an Advowſon is appendant and alieneth the ſame Mannor, and excepteth the Advowſon, the Advowſon is become in groſſe, and although hee purchaſe the Mannor, yet is the Advowſon ſtill in groſſe; and cannot bee appendant.

But in all theſe caſes ſome are of opinion that although the *Advowſon* bee excepted out of the grant of the Mannor, yet nevertheleſſe, it is requiſite to have a Deed of ſuch grant containing ſuch exception, otherwiſe the *Advowſon* will paſſe with the Mannor.

Lect. II.

Of Advowſons partly appendant, partly in Groſſe.

HAving formerly ſpoken of *Advowſons* appendant and in groſſe, now remaineth the laſt member of the former diuiſion to be mentioned, which is Advowſons partly appendant, partly in groſſe.

Such Advowſons as are partly appendant and partly in groſſe, are ſo deemed either in reſpect of the time or in reſpect of the perſons.

In reſpect of the time in this manner, ſome Advowſons there are, that are at one time appendant and at another time in groſſe, and ſo againe may be appendant as occaſion ſerueth. As if a man be ſeiſied of a Mannor or of an acre of land, to which an *Advowſon* is appendant, and leaſeth the ſame Mannor or acre, excepting the *Advowſon*, the *Advowſon* is now become in groſſe, and yet after the leaſe is ended, ſhal bee againe appendant as beſoee.

In reſpect of the parſon it may ſo happen, that an *Advowſon* may be appendant in regard of a propietor thereof, aud that in many caſes.

One caſe to begin with, is this, that if a man be ſeiſied of a Mannor to which an *Advowſon* is appendant, and an Eſtranger leauieth a fine of the ſame *Advowſon* to him that is now ſeiſied of the

the Manor and *Advowſon*, vpon which fine the ſaid counſee (being ſtill owner of the Mannor and *Advowſon*) granteth to the Counſor that hee ſhall preſent to the *Advowſon* euery ſecond avoydance, by this fine the *Advowſon* remaineth inreſpect of him that hath the Mannor, ſtill appendant to the Mannor as before, but in reſpect of the Counſor that neuer had intereſt before; at euery ſecond avoydance it is become in groſſe, and he ſhall preſent thereunto as to his *Advowſon* in groſſe.

But (as he in the former caſe) hee that was ſeiſied of the Mannor had leauyed the fine, (and the Eſtranger ſo being counſee) and made ſuch grant to the counſee to preſent at euery ſecond turne, the *Advowſon* had beene totally in groſſe; for by the counſance it had beene wholly in groſſe, and ſeuered from the Mannor.

If three be ſeiſied of a Mannor that hath an *Advowſon* appendant thereto belonging, and two of them releaſeth all their right of the *Advowſon* to the third, the third is ſeiſied of two parts of the Advowſon as in groſſe, and of the third part as appendant, for that, that the third part, was neuer ſeuered from the Mannor, but if the third dye, all the entyre Advowſon deſcends in groſſe to his Heyre, for nothing was in Ioynture but the Mannor that ſuruiued to the other two, that releaſed, their right in the

Advowſon, and no part of the Advowſon can come to them; for that, the ſame was not in Joynture, as the time of the death of the third Joyntenant, and alſo becauſe they releaſed their right before.

If two Joyntenants bee ſeiſied of a Mannour to which an Advowſon is appendant, and the one granteth all his right of the Advowſon unto another in Fee, this Advowſon is both in groſſe and appendant, and if hee that hath the Mannour, and ought to preſent everie ſecond turne, bring his *Quare Impedit*, he ſhall not ſay that hee is ſeiſied of the Mannour with the Advowſon appendant at every ſecond turne (namely, when there is partition betweene them) to preſent by turne, but ſhall ſay that he was ſeiſied of the Mannor with the moitie of the *Advowſon* appendant.

If a Mannor with an *Advowſon* appendant thereunto, deſcend to two Coperceners, and they make ſuch partition of the Mannour, and compoſition to preſent, although the compoſition be otherwiſe than of right is due, yet is the firſt preſentation to belong to the eldeſt, and the ſecond to the ſecond Coperceners, &c. and the *Advowſon* remaineth ſtill appendant notwithſtanding ſuch compoſition, to preſent by turne.

But if three Mannors deſcend to three Coperceners, and an *Advowſon* is appendant to one

of

of them, and they make ſuch partition, that everie Copartner hath a Mannor allotted to him, and compoſition to preſent by turne to the Advowſon, now is the Advowſon in ſuch caſe ſevered and in groſſe, in reſpect of the Coperceners.

If a man be ſeiſed of foure Mannors, and to one of them an Advowſon is appendant and dieth, having foure Daughters, who maketh partition of the Mannors, ſo that every of them hath a Mannor, out of which partition the *Advowſon* is excepted, this *Advowſon* is in groſſe by reaſon of the exception, yet it ſeemeth if all the other ſiſters ſhould dye, except ſhe to whom the Mannor was allotted to which the *Advowſon* was appendant, that the *Advowſon* ſhould be againe appendant to the Mannor.

If two Churches be, and the *Advowſon* of the one is appendant to a Mannor, and the other is in groſſe, and the two Churches hap to be united, and upon the union it is ordained, that the Patrons ſhall preſent by turne, now in reſpect of him that hath the Mannor, the *Advowſon* ſhall be appendant, and he ſhall preſent thereunto as to an *Advowſon* appendant, but as to the other, he ſhall preſent as to *Advowſon* in groſſe.

LECT. 12.

What Preſentation is, and what is the effect and fruit thereof, and in what manner Preſentation and Nomination differ.

IN the aforeſaid Lecture or reading hath beene declared ſuch matters as was requiſite for the explanation of the word *Right*, ſet forth in the deſcription of an *Advowſon*, which word being there put in ſtead of that which the Logicians call *Genus*, the reſt of the words ſubſequent there likewiſe expreſſed, are the Proprieties, effects, and qualities incident to an *Advowſon*, thereby to diſtinguiſh this Right from other rights; ſo that by ſuch Deſcription, the nature of an *Advowſon* may be fully deciphered.

An *Advowſon* as is ſaid, is *Ius preſentandi*, and the power to preſent is the very fruit, effect, and entire profit of an *Advowſon*, which is by the meanes of preſentation to preſer and advance our Frieud, and Preſentation is thus deſcribed.

A Preſentation is the Nomination of a Clerk to the Ordinary to be admitted, and inſtituted by him to the Benefice voyd, and the ſame being in writing, is nothing but a Letter miſſive to the Biſhop or Ordinarie, to exhibit to him a Clerk to have the Benefice voided, the formall force hereof reſteth in theſe words chiefly, *Preſento vobis Clericum meum*, 13.H.8.14.*b*. Therefore in our Bookes of Law, an *Advowſon* is called nothing

nothing but a *Nomination* or *Preſentation*, a power to prefer and enable another to have the Benefice, which notwithſtanding the Patron cannot enjoy.

Wherefore if the Nomination of an *Advowſon* be granted *habendum* the *Advowſon*, the *habendum* is ſufficiently purſuant; for although it varie in name, yet it is all one in nature, ſo that the Graunt of the nomination of an *Advowſon*, is in ſubſtance the Graunt of the *Advowſon*. For the profit and commoditie of an *Advowſon* reſteth in the Nomination or Diſpoſition of the ſame: hereof it enſueth, that if a man grant to mee an *Advowſon* excepting the Preſentation during his life, ſuch exception is voyd and repugnant to the Graunt. So that the opinion of *Thompton* in the ſecond Commentarie of *Plowden* in the arguments of *Smith* and *Stapletons* caſe, cannot be Law; who thinketh that if Tenant in taile bee of an Advowſon, and hee granteth to one by Fine the nomination of the Clerk to the ſame Advowſon when it becommeth voyd, that this Fine ſhall not bind the Iſſues, by the Statute of the 32. *H.* 8. 36. Becauſe ſuch Fine is levied of a thing intailed, as hee thought; whereby above it hath appeared, that the Preſentation and the Nomination is one thing, and the fruit and full profit of the Patronage; and therefore ſuch fine is of full effect and force to bind the iſſue in taile, for the Advow-

38. *H.* 6. 38. *b.* 38. *b.*

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38. *H.* 6. 38. *b.* 38. *b.*

ſons,

ſons, and yet if the caſe aforeſaid be ſo underſtood, that tenant in taile of an Advowſon granted by fine the Nomination of the Clarke to one, and his Heyres, ſo that when the Church became voyd, the Grantee and his Heyres ſhould nominate a Clarke to the tenant in tayle and his Heyres, and that he or they ſhould preſent: the Clarke(ſo nominated) to the Ordinarie, and the tenant in tayle dyeth, ſuch fine ſhal not binde the iſſues in tayle; therefore the fine is not of things intayled, for there is the nomination and preſentation diſtinguiſhed.

The preſentation may be diſtinguiſhed from the nomination, ſo, that one may haue the Preſentation, and another the Nomination, and ſo they may bee diuers diſtinct inheritances. As if I being ſeiſied of an Advowſon in fee, granteth to *I.S.* and his heyres, that he & his heyres euery time the Church becommeth voyde, ſhall nominate to mee a Perſon to be preſented to the ſame Church, which perſon ſo nominated, I or my Heyres ſhall preſent to the Ordinary of the place to be admitted accordingly, into the Church. And a queſtion hath been moued herevpon who ſhall be ſaid Patron of the ſame Church, ſome thinke that he that hath the nomination ſhall be Patron onely, and that he that ought to preſent, ſhalbe as ſervant to him that hath the nominatiō

24. *E.* 3. 69
a.b. 14 *H.* 4
11. *a.* 1. *H.* 5
16. 5. *E.* 4.
123. *a.* 21.
H. 6. 17.

Therefore in the 14. *E.* 4. 26. the Iuſtices diſtinguiſhed, that if one be ſeiſied of an *Advow-*

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ſon and granteth to *I. S.* and his heires to nominate at every avoydance to him and his heires a Parſon to be preſented to the ſame Church, which Parſon ſo nominated, ſhal be by him or his heirs preſented to the Ordinary, that he to whom the nomination is ſo granted ſhall be Patron.

But if I grant to *I. S.* that at every avoydance he ſhall nominate to me two Clerks, of which I ſhall preſent one to the Biſhop, now I remaine Patron, notwithſtanding this, becauſe the election is in me which of the parties named ſhall bee preſented and have the Benefice.

If a man have the Nominaiion to a Benefice, and another the Preſentation, and hee that hath the Preſentation granteth an annuitie to a Clerk untill he be advanced to a Benefice by the Grantor, if afterward the Church become voyd, and the Grantee bee nominated to the Grantor to bee preſented over, who doth ſo accordingly, and upon this bee admitted, inſtituted and inducted, yet the annuitie ſhall not ceaſe, for that, that the Grantee was not thereunto preferred by the Grantor, although he preſented him. Of the other part there is an authority, that if a Spirituall man have the Preſentation, and a Lay-man the Nomination, if the Lay-man nominate to the Eſpirituall man a Clerk to bee preſented over, who doth ſo accordingly, if before his admiſſion the Lay-man nominate another to bee likewiſe preſented, which the Spirituall man refuſeth

fuſeth to doe; for that, that hee hath preſented one already by his nomination, the Lay-man ſhall not maintaine any *Quare Impedit* againſt the Preſentor for ſuch refuſall; becauſe, the Spirituall man is Patron, and being a Spirituall man, hee cannot change his preſentation already made; Alſo it ſhould ſeeme in ſuch caſe, that the preſentation ſhould bee made onely in his name, that hath the preſentation, and not in his name that hath the nomination; therefore, if the Ordinarie ſhould refuſe the Clerk for diſability, notice ſhall be given only by him, to him that hath the preſentation, and not to him that hath the nomination; for the better reconciliation of thoſe and the like authorities, *Diſtinguendum eſt ſic*, that in reſpect it muſt be had of ſuch an Eſtranger, as ſhall uſurp upon the Biſhop, or upon the Patron, in regard of each other, and in reſpect of all ſtrangers that uſurp; He that hath the nomination is only patron, and ſhall have a *Quare Impedit*, or a writ of Right, as his caſe requireth: In which writ his of *Quare Impedit*, ſhall bee this; *Quam permittit ipſum preſentare*: but his Declaration ſhall be eſpeciall, that the plaintiffe ought to nominate one, and that hee ought to preſent him over to the Biſhop, and that *B.* hath diſturbed him of his nomination, and the writ to the Biſhop ſhall bee a recoverie to the plaintiffe, *Quod Epiſcopus admittat Clericum ad denominationem, &c.* in reſpect

ſpect of the Biſhop that hath the preſentation, he ſhall be ſaid Patron; for if hee that hath the preſentation cannot varie from his preſentation, the other ſhall not; yet if hee that hath the preſentation, and hee that hath the nomination bee both Lay-men, then he that hath the nomination may varie in his preſentation, and change the ſame as often as he will, untill Inſtitution be had: wherefore in the former caſe it enſueth, that if he that hath the preſentation be a Spiritual man, and preſent him that is nominated to him, being not fit, hee ought not to have notice given him of the refuſall of the Ordinarie, for this cauſe, he that hath the nomination ſhall not have any notice likewiſe.

For I thinke the Law to be thus; If one hath the nomination and another the preſentation, and the Church becomes voyd, if the Laps incurre, and hee that hath the preſentation onely preſenteth to the Biſhop, before the Biſhop take benefit of the Laps, without any nomination of the other, the Biſhop in this caſe ought and is bound to admit his Clerk that hee ſo preſenteth, as the Clerk of the Patron himſelfe. If reſpect be had each of other, then are they both Patrons after a manner, and by injurie offered by everie of them to the other, one of them may puniſh the other. As if he that hath the nomination will preſent immediately to the Ordinarie, he that hath the preſentation may bring a *Quare*

Impedit or a Writ of right of *Advowſon*, againſt him as his caſe requireth, ſo if hee that hath the preſentation refuſe to preſent the Clerk nominated to him, or preſent one himſelfe without nomination, the other ſhall bring a *Quare Impedit*, or a Writ of right againſt him, and his Writ ſhall be *Quod permat ipſum preſentare, &c.* But in his Declaration he ſhall declare the eſpeciall matter.

Fitzh.33.b. 14.H.4.11. a.21.H.6. 17.a.

In everie of which ſuits and recoveries, and in the Writ to the Biſhop ſhall be ſo, if hee that hath the nomination preſent to him that hath the preſentation, hee that hath the preſentation may diſturb him in two manners; either by refuſing the parſon nominated, or by preſenting ſome other himſelfe that is not nominated. If hee refuſe to preſent him that is nominated to him, and ſuit be commenced without any actuall preſentation made by himſelfe, then the Writ to the Biſhop of him that hath the nomination ſhall bee, that hee ſhall recover his nomination, and that the Biſhop ſhall admit ſuch as the other hath nominated to the preſentor, according to his grant of nomination: But if the diſturbance upon which the ſuit is granted bee becauſe the preſentor that ſhould preſent the parſon nominated, hath preſented ſome other himſelfe, without nomination, then the Nominator ſhall have his Writ to the Biſhop to preſent his Clerk immediately without any nomination at all,

24.E.3.69. b.

all, to be made to the other, that hath the preſentation, and to remove the other Incumbent.

Finally, if one hath the nomination, and another the preſentation, if ſuch right of preſentation acrew to the King, this ſhall prejudice the inheritance of him that hath the nomination, but hee ſhall nominate to the Chancellour ſtill, who in the name of the King ſhall preſent to the Ordinary. And if the King preſent without any ſuch nomination, the Nominator ſhal bring his *Quare Impedit*, againſt the Incumbent only, becauſe the King cannot be termed as a Uſurper.

LECT. 13.

The things incident to Preſentation proſecuted, who may preſent, what Parſons may bee preſented, to whom the Preſentation muſt bee made, and the manner thereof.

BEfore hath beene ſhewed what a Preſentation is, and what is the effect and fruit of the Patronage; and finally, in what caſe the Preſentation and Nomination differeth.

At this time it reſteth, how to proſecute the things incident to Preſentation, and to make ſhew who may preſent, what Parſons may bee preſented, to whom the Preſentation muſt bee made,

made, and in what manner; But becauſe no preſentation can bee made unleſſe to a Church or Dignitie, ſomething ſhall be ſhewed, when they ſhall be voyd, and upon what occaſion.

An avoydance is in two ſorts, actuall in Deed, deſtitute in Law, which is an avoydance *de Facto*, and avoydance *de Jure*.

Actuall, is when the Church is actuall in deed deſtitute of his Incumbent in Law, when the Church being full of an Incumbent, is notwithſtanding fruſtrate of his right and lawfull Incumbent, by reaſon of incapacitie or crime in the parſon of him that occupieth in ſtead of the rightfull and lawfull Incumbent, and therefore amongſt the Canoniſts, *Eccleſia Dr. viduam tuam ſponſumque habet inutilem*, there is therefore a great difference betweene voydance in Law, and voydance in Deed; the firſt of which two, the Eſpirituall Court hath to determine, and therefore the ſupreme head may ſo diſpenſe there, that ſuch avoydance in Law ſhall never come to bee avoydance in Deed, and of avoydance in Law no title acreweth to the Patron, unleſſe ſomething be thereupon accompliſhed, by the Eſpirituall Court, as a declaratorie ſentence or ſuch like; but, upon avoydance in Deed, preſentment acreweth to the Patron, yet in ſuch and the like caſes, *Diſtinguendum eſt*, for if the Dignitie be temporall, as a Maſter of an Hoſpitall or ſuch like, and that there bee found defect

defect in him by Viſitors, it is an actuall avoydance; and the Patron may upon this make a new collation, without ſolemne ſentence of deprivation; but if the Dignitie be Eſpirituall, it is requiſite upon ſuch defect that ſentence of deprivation be given, before avoydance can bee, and that ſuch ſentence be notified to the Patron, otherwiſe Laps ſhall not incur againſt him.

Avoydance and Plenartie, are *primativa contraria*, which if they come to bee tryable by iſſue betweene the parties, they are tried by two diſtinct Lawes. Plenartie, which is, if the Church be full of an Incumbent or not, ſhall be tried by the Common Law, which is by the Certificate of the Ordinarie; but avoydance, which is, if the Church be voyd or not, ſhall be tried by the Countrey impannelled in a Jurie, notwithſtanding if the iſſue bee upon any ſpeciall ſort, or manner of avoydance, the ſame ſhall be taxed by the Certificate of the Biſhop, ſo that ſuch ſpeciall cauſe ſhall be Spirituall.

The efficient cauſes of avoydance, are either temporall as Death, or ſpirituall as Deprivation, Reſignation, Creation, Seſſion, and Entrie into Religion, whereof more ſhall be ſaid afterward.

LECT.

LECT. 14.

The two firſt particular cauſes of Avoydance of Churches, viz. *Is either Temporall, as Death; or Spirituall, as Deprivation; the one of it ſelfe being manifeſt, and the other a diſcharge of the Dignitie or Miniſterie.*

IN the laſt Lecture or reading before, was ſhewed ſomething of avoydances of Churches in generall, now it remaines to purſue the particular meanes; that is to ſay, Death, Deprivation, Reſignation, Creation, or Ceſſion, and entrie into Religion, of everie of which, wee will ſpeake ſomething, as the cauſe requireth.

1 And firſt of all, concerning Death, *Quæ omnia ſolvit*, the matter of it ſelfe is manifeſt, and needeth no further declaration.

2 As concerning Deprivation, it is a diſcharge of the Incumbent of his Dignitie or Miniſtery, upon ſufficient cauſe againſt him conceived and proved; for by this, hee loſeth the name of his firſt dignitie, & herein two manner of wayes; either by a particular ſentence in the Spirituall Court, or by a generall ſentence by ſome poſitive or Statute Law, of this Realme.

1 Deprivation, is in the Spirituall Court for that, that it is grounded upon ſome defect in the

the partie deprived, although it be by act of Law, yet it is deemed as the act of the partie himſelfe. The cauſes of Deprivation, by Cenſure in the Spirituall Court are to be referred to the Common Law, therefore let us remember ſuch of them, vpon which queſtions have beene mooved in the Bookes of our Law, all which cauſes mentioned ſeverally, may be reduced to three principall poynts; firſt, want of Capacity; ſecondly, Contempt; thirdly, Crime. As concerning the firſt, although by the Common Law, a Lay perſon bee preſented, and Inſtituted, and Inducted, to an eſpeciall Benefice, which Curate is altogether uncapable of the ſame, yet the Church is not therefore to bee ſaid voyde, as if no preſentation had beene, but it is ſtill full of an Incumbent, *de Facto licet non de Iure*, vntill by ſentence Declaratorie for his want of Capacity, the Church be adiudged voyde, and vpon this no Laps ſhall iucurre againſt the Lay Patron, without notice (of ſuch incapacity, & ſentence of deprivation therupon) to him given, King *H.*4. preſented one that was incapable of his preſentation, and the Preſentee was thereby admitted, inſtituted, & inducted, & afterward the Pope enabled the preſence by his Bill, yet the King had a *Scire fac.* and thereby recovered his preſentation againe, becauſe the Incumbent was not capable whē he was preſented. If the Patron preſent one that is meerely a Lay

man, within the age of 25. & he vpon this be Admitted, Inſtituted and Inducted, and afterward a *Qua. Imp.* be brought againſt the Patron and the ſame Incumbent, wherof Iudgment is given by the default of the Incumbent, where indeed the Incumbent was never at any time duely ſummoned according to the Law, by reaſon of which Iudgment, the ſame Incumbent is removed, if vpon this afterward, the ſaid Incumbent by ſentenc declaratory be deprived in the Spirituall Court, for want of Capacity in ſuite there, for the cauſe of his incapacity exhibited againſt him, ſuch ſentence is good, & availeable in the Common Law although the ſaid Incumbent were before removed from his Benifice by the Judgment given againſt him in the *Qu. Imp.* for though ſuch declaratory ſentence given againſt him by the Spirituall Law, cannot remoue him that is removed already, yet it ſhall make this Incumbent anſwerable to the next Incumbent, for all the meane profits received by him, that was the firſt Incumbent, from the time of his Induction. Yet if the firſt Incumbent ſo deprived, wil afterward bring a writ of deceipt vpon the Iudgment given againſt him in the *Quare Impedit* by default; for that, that he was not ſummoned as aforeſayd, hee ſhall have Iudgment herein, and the ſame Deprivation had in the meane ſeaſon in the Spirituall Court, no Impediment thereunto; for that, that in the ſaid ſuite of Deceipt the

the Incumbancie ſhall not bee in queſtion, but onely the diſturbance of the plaintiffe, in the *Quare Impedit*, and ſo for Incapacitie.

Contempt may likewiſe be a cauſe of Deprivation, as if the parſon or other Incumbent bee excommunicate, and hee ſo remaineth in his obſtinacie for the ſpace of fortie dayes, he is for this deprivable of his Benefice, and yet the Church is not voyd in Deed, without ſentence in Deprivation given againſt him, and if before ſuch Deprivation, the King as ſupreame Ordinarie and the head of the Church would have a Diſpenſation for the Incumbent, who for all the ſentence of Deprivation for his contempt had, hee ſhall hold his Benefice; ſuch Diſpenſation were voyd, and ſhould reſtraine the patron from his preſentation acrewed to him, by meanes of ſuch Deprivation after enſuing.

The third cauſe, is Crime, within which may be comprehended Delappidation, or ſpoyle of the Church Benefice, once, in our Books, worthy of Deprivation, likewiſe Schiſme or Hereſie; for the which, or if for ſome other cauſes the Incumbent were deprived in ancient time in the Court of *Rome*, upon ſuch Deprivation coming in queſtion in our Law, the iſſue ſhould bee upon the avoydance, and it ſhould be tried where the Church or Dignitie is; but becauſe, Crime is *Hydra*, with many heads, and an evill Tree, whereof is bred *Ingens proventus*, much

fruit, for all fruit of offences which may be comprehended vnder this name; therefore let vs surceaſe further to deale with it, onely in general, noting thoſe three things as the incidents and conſequents of Deprivations.

Firſt, that our Law adiudgeth not the Church actually voyde, without a ſentence of Deprivation, as hath beene before prooved.

Secondly, that though ſuch ſentence of Deprivation be meerely wrongfull; yet the Dignitie is voyde, and the ſentence remaineth in his force, vntill it be releaſed.

Thirdly and laſtly, if the party deprived within time require by this Law an appeale (vpon ſuch ſentence of Deprivation giuen againſt him at the Court of the high Iuriſdiction) ſuch is the nature of an Appeale, that it holdeth (the ſentence vpon which it was firſt brought) in ſuſpence; becauſe, in the Common Law it is ſaid, to have *effectum ſuſpenſum prioris pronuntiati*; and therefore, if it be brought upon Deprivation, it voydeth the vigour thereof, and reviveth the former dignity, for ſuch Church ſhall not be voyde, vntill the firſt ſentence of deprivation chance to be affirmed in the appeale, and thus much of deprivations in the Spirituall Court, ſhall ſuffice at this time.

Concerning Deprivation by Cenſure of Statutes and Poſitiue Lawes, ſee theſe Books that is to ſay, 13. *El. Cap.* 12. 26. *H.* 8. *Cap* 3, revived by the 1. *El. Cap.* 31. or 3.

LECT. 15.

The third particular cauſe of Avoydance, being Spirituall, is Reſignation.

THe precedent Lecture before going, hath ſhewed the particular cauſes of Avoydance of Churches whereof the two firſt, Death and Deprivation, hath beene at la rge deciphered; the next is Reſignation, of which I will alſo at this time ſomething ſpeake.

Reſignation, or as the Canoniſts termes it *Remytation, Eſt Iuris propri Spontania refutatio*, or whereas Reſignation is the voluntary yeelding up of the Incumbent (into the hands of the Ordinary) his intereſt and right that he hath in the Spirituall Benefice, to which he was promoted. Of which the matter or ſubject is the Spirituall benefice, as promotion Eccleſiaſticall.

The forme is the manner how, and with what words or due Circumſtances it is or ſhould be accompliſhed.

The finall Cauſes or effects hereof, is either thereby to make the Spiritual Benefice voyd and deſtitute of its Incumbent, or vtterly to anient and totally to extinguiſh ſuch Spirituall promotion.

The efficient Cauſes are the perſons that reſigne,

ſigne, and the perſons to whom it is or ought to be reſigned.

As concerning the matter; this onely may ſuffice to be obſerued, that all Spirituall Dignities preſentatiue may properly be reſigned, although they be Abbies, Priories, Prebends, Parſonages, or Vicaridges, yet ſuch Dignities as are certaine may alſo be reſigned, or to ſpeake more properly relinquiſhed, as were ſome of the Abbies in the time of King *Hen.* the 8. and ſo may Biſhoppricks at this day be reſigned, &c. into the hands of the King as ſupreme Ordinary of the Church and rightfull Patron of the ſame Biſhopricks.

As concerning the forme of Reſignation, and proteſtation which muſt be when the party will reſigne, they are ſet out in the Regiſter, *fol.* 302. in the folioes of the Booke following, as *Fitzh.* noteth in his *Nat. Br. fol.* 273. *F.* or *S.* The words of chiefe effect in ſuch Inſtrument of Reſignatino, are *Remantiare*, *Edere*, *& Dimittere*, for Reſignation is not any proper terme of the Common Law.

Yet the Law of this Realme, more reſpecting matter then formality of words, hath adjudged a Graunt made by a Prebendarie to the King, to be an effectual Reſignation in the forme of theſe words following, that is to ſay.

Noverint me A. &c. ex animo deliberativo, certa ſcientia & mero motu, & ex quibusdam cauſis juſtiis & rationalibus me ſpecialiter mouent.

nent. vltrò & ſponte dediſſe ſereniſſimo Domino noſtro Ed. 6. Angliæ, &c. ſupremo Capiti totorum Prebendarum ſuorum ac omnia maneria terras, tenementa poſſeſſiones & hereditamenta quecunque, tam ſpiritualia quam temporalia, ac omnem plenam & liberam facultat diſpoſitionem authoritat. & poteſtat. dictæ prebendæ pertinen. ſpectan. appenden. &c. habendum & tenendum eidem Rege Hereditor. & Succeſſoribus ſuis, ad eius vel eorum proprium vſum, &c.

As touching the efficient cauſes of Reſignation; as firſt, the perſon that reſigne, if he bee not but onely Admitted and Inſtituted, although as concerning the Spirituall Function he be a Parſon before Induction, yet becauſe no part of the Free-hold of the Spirituall Benefice is tranſferred to him, but by the Induction, hee cannot vntill after the Induction, if the King bee Patron, make any good and effectuall Reſignation; as therefore, *Renuntiatio reſpiſit plerumque ius queſitum, ac repudiamco pertinet ad ius nondum acquiſitum.* As alſo for that, that by this ſubmiſſion and Inſtitution, the Church is not ful in reſpect that the King being Patron, ſuch incumbent before Induction is full ſubiect to have his preſentation and Inſtitution revoked. *Com.* 126. 21. *E.* 3. 5. *a.*

But if a Subiect bee patron, and his preſentee be admitted, ſuch preſentee (if he be willing to leaue his Charge) may before Induction reſigne the

the Church, for the eſpirituall Dignity was full of an Incumbent in reſpect of his Patron, and becauſe alſo there is no other meanes to cleare the Church of him but by ſuch renunciation.

As concerning the perſon to whom Reſignation muſt be made, *Diſtinguendum eſt*; for if he be onely purpoſed to avoyd the Church, and to cauſe the Patron to preſent againe, then it ought to bee done to the Ordinarie to whom of right the Admiſſion and Inſtitution belongeth, and to whom the Patron is bound to preſent; for it is a Rule amongſt the Canoniſts, *Apud enim debet fieri renuntiatio apud quem pertinere, dignoſcitur confirmatio*, and Reaſon will, it ſhall be ſo; becauſe the King as ſupreame Ordinarie, if ſuch Reſignation ſhould be made to him, hee is not compellable to giue notice to the Patron of ſuch Reſignation, nor can hee or any other Ordinarie collate vpon the Patron ſuch notice.

Notwithſtanding, if the purpoſe be utterly to extinguiſh ſuch Dignitie ſpirituall, the ſame Reſignation may be made to the King, as to the ſupreame head of the Church, as in ancient time it might haue beene made to the Pope.

For ſuch Authority and Juriſdiction as the Pope vſed in this Realme, was contradicted by an act of Parliament made in the 25 *H.* 8. and other Statutes to be in *H.* 8. and his Succeſſors; which Iudgement and opinion I hold too be firme Law, eſpecially where the King himſelfe

is

is Patron, or where the Patronage is to ſome Spirituall man for ever, upon Spirituall parſons the Pope (before the Statute of the 25.*E.*3.) by his proviſions and other meanes uſed more Juriſdictions than at any time Lay perſons could bee permitted to doe. The finall effect which conſiſteth in the end, wherfore Reſignation was ordained, wee have heard to bee two-fold, the one to adnihilate the Spirituall promotion, the other to make it voyd and fit for no Incumbent; of the firſt, wee have ſufficiently ſpoken before, and the uſe of the other is manifeſt by thoſe authorities ſubſequent. 1. 2.

A Prebend maketh a Leaſe for yeares rendering rent, and after reſigneth it, it is holden cleerely, that by this his Reſignation, this Prebend is diſcharged of the rent, and therefore ſuch charge ſhall not be any burthen to his Succeſſour; likewiſe if a Parſon reſigne after hee hath made a Leaſe for yeares, the Leaſe is avoyded.

Likewiſe, if a Parſon permute or change his Benefice, which indeed cannot bee accompliſhed without Reſignation, the Charge or Grant made by ſuch Incumbent for yeares, is utterly voyd.

If a Parſon grant an Annuitie out of the parſonage, and after reſigne, if after all this the Patron and Ordinarie will confirme ſuch Graunt, the Confirmation, and the Graunt which was

voyd before Confirmation cannot be available.

14. H. 8. 8 a. With which agreeth *Pollyard*, who ſaith; that if a parſon charge a Gleebe, and after reſigneth or dyeth, the charge is avoyded.

A Recoverie was had againſt a parſon in an action of Debt, and in a *Fieri fac.* thereupon the Sheriffe returned, that the Defendant was *Clericus Beneficiatus & non, &c.* in this caſe, if the Defendant reſigne, the plaintiffe is deſtitute of his recoverie, for by ſuch Reſignation the Church is diſcharged; becauſe the Ordinarie cannot ſequeſter the Spirituall Benefice upon any proceſſe awarded to him.

But if the Incumbent that ſo chargeth, bee ſuch as hath by the Law abſolute power to deale with the lands of his Spirituall Dignity, without the Confirmation of any other, and may by the Law diſcontinue as Abbot, or Prior, or ſuch like, then ſuch charge by him ſhall not be voyd, by ſuch Reſignation, but ſhall continue againſt his Succeſſours untill it be avoyded by ſome other meanes.

Thus much concerning the finall cauſe of Reſignation, to which ſuffer us to annex the cauſes allowed by the Common Law, to move a Biſhop, or any other beneficed parſon to relinquiſh and ſurrender their function, *Conſcientia criminis, debilitas corporis, defectus ſcientiæ, malitia plebis, grave ſcandalum, & irregularitas perſonæ.*

Laſtly,

Laſtly, let us conſider, that Reſignation is deemed in the Law totally to bee the act of the partie, and therefore if any Incumbent being plaintiffe in any action reſigne his Dignitie or promotion, his writ brought by him as Incumbent ſhall abate.

But if ſuch Incumbent take out a Writ concerning his Rectorie, and afterward reſigne, and againe be promoted to the ſame Dignity, before the returne of the Writ aforeſaid, it is good and available.

Upon the part of the Defendant upon the ſame reaſon, is the Law; that if any action bee brought againſt any Incumbent, that may charge him in reſpect of his ſeverall promotions, his reſignation (having the ſame ſuit; for that, that it is his act) ſhall not abate ſuch writ or action.

It is to be noted, that there are two ſorts of Reſignations, the one is abſolute, when the Incumbent intendeth ſo to make void the Church, and to ſurrender his right therein to the Ordinarie, whereupon the patron may preſent whoſoever it ſhall pleaſe him to the Church, as if the ſaid had been voyded by death, or other meanes of Avoydance, as by precedent authorities hath appeared.

The other cauſe of Reſignation, is *cauſa permutationis*, of which in the Regiſter, *fol.* 306. *b.* appeareth a preſident.

Whereupon alſo enſueth the forme of Preſentation in this manner.

In Dei nomine, Ego H.W. nunc Rector Eccleſiæ de P. London. Dioceſies & prius Rector Eccleſiæ de L. c. Dictæ P. Dioceſies proteſtor dico & allego in hiis ſcriptis quod ſi contingit quod hujuſmodi Eccleſia mea, de P. abſque dolo & culpa meis in hac parte à me aliqualiter evincatur volo & intendo ad Dictam Eccleſiam de N. abſque aliqua difficultat. libere & licite redire, & eam rehabere juxta Canonicas ſanctiones & proteſtor inſuper quod non intendo nec volo ab hujuſmodi proteſtatione ſeu affectu ejuſdem recedere aliqualiter in futurum, ſed eidem proteſtationi & contentis in eadem volo & intendo in futuris temporibus firmiter adhærere, juris beneficio in omnibus ſemper ſolvo, &c.

But to what purpoſe Proteſtation ſhould ſeeme in our Law, I cannot perceive; for that, that it appeareth by the Booke in the 45. *E.* 3. and *Fitzh.* exchange it.

Lect. 16.

The next ſpeciall meanes, in Avoydance of Spirituall promotions preſentative, is Creation.

NOw Creation is, where the Incumbent is not onely elected, but conſecrated Biſhop, or Arch-Biſhop. By the former Dignities of ſuch conſecrated, the Benefices becomes voyd, and the Churches or places ſeverall (where their former Sanctuarie was to be executed) and utterly diſcharged of their Incumbent, and this immediately upon Conſecration without ſolemne ſentence Declaratorie in the Spirituall Court.

The reaſon whereof, is not only for Inconvenience of Pluralities; but alſo, becauſe it ſhould be likewiſe inconvenient for one and the ſame parſon to be a Subject and a Soveraigne, which in the courſe of our manner of Juriſdiction cannot be, but is reſerved in the Superiour.

Nevertheleſſe, ſuch avoydance is not before Conſecration or Creation, nor before Conſecration is he that is promoted, deemed or called Biſhop, or Arch-Biſhop: as appeareth by theſe authorities of 5.*E.*2. *Fitzh.br.*250. *vide* 9. *E.* 3. *f.*1. *trial.*371. 7.*E.*3.40.*a.b. vide* 21.*E.*3.40.*a.b.* 41.*E.*3.56.*b.* 46.*E.*3.32. 11.*H.*4.37.59.76. & 22.*H.*6.27.*a.*

For the better underſtanding of this kind of avoydance, it is to be noted, that as foure things are required to concur for the full perfecting of any parſon or parſons preferred to any Dignitie Eccleſiaſticall, preſentative, or Collative, as (to wit) firſt of all Preſentation, or as the caſe requireth Collation; ſecondly, Admiſſion; thirdly, Inſtitution; and fourthly and laſtly, Induction.

So in the promoting of a Biſhop or Arch-Biſhop, by the Spirituall Lawes, were required (before the ſtatute of the 25. *H.*8. *cap.*20.) alſo foure things anſwerable in many reſpects to the foure former before recited. As firſt Election, ſecondly Confirmation, thirdly Conſecration, Creation, or Inveſture; and fourthly, Inſtallation, or Inthronation.

The Election was made by the Deane and Chapter, or by the Prior and Covent, where they being as Deane and Chapter, as in every of the Sees Cathedrall of *Canterbury*, *Worceſter*, and *Norwich*, in which Churches the Prior and Covent was till the diſſolution of Monaſteries, at which time the ſame Priories were diſſolved, and in ſtead of them in every of the ſame Cathedrall Churches, a Deane and Chapter hath been by private Acts of Parliament erected. But in ſome other Cathedrall Churches, the Election hath beene both by Deane and Chapter, as of *Wells*, and by the Prior and Covent at *Bathe*; and in the See of *Coventry* and *Lichfield*. And in ſome

ſome other Cathedrall Sees, the election of the Biſhop have beene by two ſeverall Deanes and Chapters, as in the Archbiſhoprick of *Dublin* in *Ireland*, where both the Deane and the Chapter of *Chriſts Church*, and the Deane and Chapter of Saint *Patricks* joyned in election, and both of them uſed to confirme the grants of the Biſhop, although *Chriſts Church* was knowne to be the more ancient Church to that See.

As concerning therefore the Election of Arch-Biſhops and Biſhops, the Kings of this Realme of their prerogative royall, & being immediate Patrons of the ſame Cathedral Church, in ancient time gave and beſtowed of their Imperiall Juriſdiction, Archbiſhopricks and Biſhopricks, to ſuch worthy parſons as they thought fit, without any election of the Chapter as appeareth in the 17. *E.* 3. 46. *Stower*, and this inveſture was by a ring and a little ſtaffe, by the deliverie of the King, and Enſignes of the Biſhop; but afterward in the time of King *Iohn*, in as much as the Popes had made conſtitution, that no man ſhould enter into the Church by a ſecular perſon, totally, and that the Biſhop of *Rome* coveted to erect the Poperie above the Throne of Kings. A great controverſie was now amongſt the Monks of *Canterbury*, upon the death of *Hubbert* their Arch-Biſhop, concerning the Election of a new one, and although the youngeſt ſect of the Monks having

ving licenſe of the King, and alſo appointment of the King to chuſe *John Gray*, one of the Biſhops in this Realme for their Arch-Biſhop, yet the quarrell grew to ſuch fervencie, that it could not be quenched unleſſe from *Rome*, where the Pope taking opportunitie of ſuch diſſention, would not receive any of the elected, but forced the Monks to chuſe for their Arch-Biſhop *Stephen Langhton*, then Cardinall of Saint *Chriſogon*, whereof enſued the great diſcord betweene the King, and the Pope; of which, ſuch was the tyrannie of Antichriſt, that not onely the whole Land was interdicted and ſo remained five yeares. But the King was accurſed, and the Subjects were diſcharged of their obedience, and oath of their allegeance to their naturall Prince; and *Lewis* the French Kings ſon provoked to make warre againſt King *John*, untill hee were conſtrained to ſeeke peace at the hands of the Pope, to yeeld his Crowne to the Legate, and after five dayes to take it againe at the Legates hands, & become feodary Tenant to the Pope for the ſame, paying an annuall ſum of mony to the Church of *Rome*, for ever; but alſo to content his Clergie, he gave to them alwayes free election of Spirituall Dignities, which memorable antiquitie of the Kings prerogative and the loſſe therof, is briefly touched in the 2.*H*.4.686. and more at large by the Hiſtories of thoſe times, and although hereby free

Elections

Elections were given to the Clergie, yet ſued they forth the Kings licence to proceed to Election.

The Election of a Biſhop thus made, did not beare the name of a Biſhop, but was to be called Lord elect of the place or Biſhoprick, to which he was elected.

The ſecond is Confirmation, which was uſually made by the Biſhop of *Rome*, and not any other, who (before ſuch confirmation) uſed to examine the partie, and upon cauſe of nonabilitie to refuſe him.

The third is Conſecration, which was performed by the Biſhop and two other Biſhops at the leaſt of the ſame province where the Biſhoprick then was, being thereunto appointed with the uſe of certaine ceremonies, as beatitudes, holding of the Bible over the head of the parſon to be conſecrated, laying on of their hands upon his head, anoynting, and other rites thereunto requiſite; And yet it is ſaid, that the Pope reſerved the conſecration of the Biſhop to himſelfe after election and confirmation, and before creation and conſecration: hee that was ſo elected and conſecrated, might ſtill retaine the name of his former Dignitie, and if hee would refuſe the impoſed charge of the Biſhoprick. 38.*E.*3.30.*b* 5.*E.*2. *Fitzh.*800. 2.*E.*3. *Fitzh.bre.* 250. 21.*E.* 3.5,6.

And yet after confirmation, and before conſecration of the parſon confirmed, hee might exerciſe ſo much of his Spirituall Function as

concerned the Jurisdiction, but no matters concerning Ordination might he meddle with; for the full understanding whereof it is to bee knowne, that all things belonging to the Episcopall function or Ministerie, are to bee reduced to three points; for they belong to him, either *Ratione Jurisdictionis*, as the hearing of spirituall causes, censures, and corrections Ecclesiasticall, as Excommunications upon offenders and such like, which may be performed by him after confirmation.

Or, *Ratione Ordinationis*, as giving of Orders, consecrating or allowing of Churches, or such like, which he cannot doe before consecration.

Or, *Lege Diocesiana*, as the execution of Ecclesiasticall payments and pensions due to him, as Diocesian of the Clergie, rated upon the Bishopricks of his Diocesse, called therefore by the Common Law *Census Cathedraticus*.

41.*E.*3.56. 46.*E.*3.32. *a.* Notwithstanding, the King may restore to him his Temporalties after confirmation and before consecration, if so it please his Highnesse, but this is *De gratia & non de jure*.

But after Consecration, hee was holden in all respects a perfect Bishop, and all his former dignities thereby were avoyded, for although by Confirmation *spirituale conjugium contrahetur*, yet by Consecration *consumatur*.

The last thing is, Installation or Inthronation, by which he is fully enabled, to pursue his Temporalties,

poralties out of the hands of the King, and actually to enjoy the benefit therof, but if after conſecration, and before he ſue for the Temporalties out of the hands of the King, the Free-hold bee in him or not, is diverſly taken in the 38.*E.*3. 90.*b.*5.

Notwithſtanding, the Metropolitan ought to certifie the day and time of the conſecration of everie Biſhop within his Dioceſſe, for according thereunto hee ſhall be reſtored to his Temporalties, and this I think to be reaſon.

Thus you ſee, that in ſome reſpect the election of a Biſhop reſembleth the preſentation of a Parſon, the Confirmation reſembleth the Admiſſion of a Parſon, the Creation reſembleth the Inſtitution of a Parſon, and the Inſtallation or the Inthronation the Induction of a Parſon, yet in many other reſpects they differ.

And although after the abrogating of the Popes authoritie out of this Realme, it bee ordained by the 25.*H.*8.*cap.*20. that the election of Biſhops and Archbiſhops ſhould be altered, and the King reſtored to his ancient prerogative therein, which prerogative King *Iohn* and his ancient Progenitors long ſince enjoyed, and although likewiſe the ceremonies, forme, and manner of conſecration of Biſhops by the authoritie of Parliaments, in the time of King *Ed.* the ſixth, were now appointed and publiſhed, all acts of Parliament being repealed by the firſt

and ſecond of *Philip* and *Mary*, are now revived and in force, by *Eliz.* yet our former poſition holds now firme Law, that no Church nor Spirituall Dignitie at this day becommeth voyd, by making the Incumbent thereof Biſhop, untill his Conſecration, as well by rigor of ancient time, as by Statute.

And therefore at the Common Law, if the King upon defect, or oherwiſe, give by vertue of the 25. *H.* 8. 20. by his Letters patents to any fit parſon, any Biſhoprick or Archbiſhoprick within this Realme, without election, and thereupon before Conſecration reſtore to him his Temporalties, or if the Pope had given a Biſhoprick to any fit perſon by reſervation, wich amounteth in Law to an Election and Confirmation, if the King had reſtored to him his Temporalties, yet in both caſes untill Conſecration, he is no perfect Biſhop, nor his former Dignities by ſuch Grant and reſtitution of Temporalties become voyd untill Conſecration as aforeſaid.

If before the 25. of *H.* 8. 20. the Incumbent of a Benefice had beene elected Biſhop and confirmed, and before conſecration had, obtained of the Biſhop of *Rome* a diſpenſation ſtill to enjoy his former Benefice, notwithſtanding his creation or conſecration had enſued accordingly; yet by ſuch creation the Church ſhould not have beene voyd, but the partie ſtill enabled to retaine the ſame Benefice againſt the Patron

by

by vertue of ſuch Diſpenſation.

So at this day, if an Incumbent of a Spirituall Benefice, be elected and confirmed, and before hee bee conſecrated, obtaine licence or diſpenſation of the Archbiſhop of *Canterbury*, to detaine the Benefice *incommendam*; yet he ſhall be promoted to the ſame Biſhoprick, although his licence never be enrolled in the Chancerie, according to the 25. *H.* 8. but onely enrolled by the Regiſter of the Archbiſhop, although the conſecration be before this licence or diſpenſation appointed to take effect, yet by vertue of ſuch diſpenſation, the former Dignitie or Benefice becommeth not voyd, by the ſame conſecration. Yet if the Incumbent of any Spirituall Benefice be elected, conſecrated, and confirmed Biſhop, and after his conſecration procureth a diſpenſation of the Pope in papatie, or of the Metropolitan ſince the Statute of this 25. *H.* 8. *c.* 20. ſuch diſpenſation ſhall not be available, becauſe, by the conſecration, the former Dignitie or Benefice was actually, and in Deed voyd; and then, neither the Diſpenſation of the Pope could at any time, nor of the Metropolitan at this time, take from the Patron the right of his preſentation of ſuch avoyded Dignitie, by the Conſecration acrewed to him; becauſe, after the firſt Dignitie is once voyd by the Conſecration, the Diſpenſation commeth too late.

Yet the King; *Ex ſumma autheritate ſua Regia*

Eccleſiaſtica qua fungitur, may grant (to the Biſhop that is conſecrated) power to take and receive by Preſentation, Inſtitution and Induction, any Spirituall Benefice, and to hold the ſame in *Commendam*, notwithſtanding his eſtate of being Biſhop, for ſo the Pope uſed to doe, and the ſame authoritie is recogniſed by the Statute of the 25. *H.* 8. to bee in the King or Queene of this Land, which was within this Realme by the Pope.

Finally, this is to be noted, that whereas before it hath beene ſaid, that Deprivation is the act of the Law, yet grounded upon the act of the partie; So is creation of the Biſhop, the act of the Law, wherfore if a man bring an action and pendant his writ, bee created Biſhop, the writ ſhall not abate; becauſe, it is only the act of the Law, but yet Reſignation is meerely the act of the partie, thus much for Creation.

FINIS.